COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

DIFFÉREND TERRITORIAL

(JAMAHIRIYA ARABE LIBYENNE/TCHAD)

VOLUME VI

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

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Les documents relatifs à cette affaire sont publiés dans l'ordre suivant:

Volume I. Compromis; mémoire de la Jamahiriya arabe libyenne.
Volume II. Mémoire de la Jamahiriya arabe libyenne *(suite)*.
Volume III. Mémoire du Tchad.
Volume IV. Contre-mémoire de la Jamahiriya arabe libyenne.
Volume V. Contre-mémoire du Tchad.
Volume VI. Réplique de la Jamahiriya arabe libyenne; réplique du Tchad.
Volume VII. Comptes rendus d'audience.

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Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios: outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2013.

This case, entered on the Court's General List on 3 September 1990 under number 83, was the subject of a Judgment delivered on 3 February 1994 (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 6).

The documents relating to the case are being published in the following order:

Volume I. Special Agreement; Memorial of the Libyan Arab Jamahiriya.
Volume II. Memorial of the Libyan Arab Jamahiriya *(continuation)*.
Volume III. Memorial of Chad.
Volume IV. Counter-Memorial of the Libyan Arab Jamahiriya.
Volume V. Counter-Memorial of Chad.
Volume VI. Reply of the Libyan Arab Jamahiriya; Reply of Chad.
Volume VII. Verbatim Records of the Hearings.

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For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties; that has been done here, except when the technical quality of certain annexed documents was not sufficient for them to be published.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2013.

TABLE DES MATIÈRES — CONTENTS

Page

Reply of the Great Socialist People's Libyan Arab Jamahiriya — Réplique de la Jamahiriya arabe libyenne populaire et socialiste

PART I. INTRODUCTION 6

CHAPTER I. THE ESSENTIALS OF THE LIBYAN CASE AND THE DISTORTIONS OF THAT CASE IN CHAD'S COUNTER-MEMORIAL 6

Section 1. The essentials of the Libyan case 6
Section 2. The distortions of Libya's case in Chad's Counter-Memorial . 11

CHAPTER II. THE ISSUES THAT CONTINUE TO DIVIDE THE PARTIES 18
CHAPTER III. THE TASK OF THE COURT 20

Section 1. Interpretation of the *compromis*: ordinary meaning, context and *travaux préparatoires* 22

(a) The ordinary meaning of the *Accord-cadre* 23
(b) The "context" of the *Accord-cadre* and the importance of the positions adopted by the Parties in their written pleadings 25
(c) Factors establishing Chad's recognition of the Court's *compétence* to examine the merits of Libya's claim 27
(d) The lack of purpose of embarking on an "historical" interpretation of the *Accord-cadre* 32

Section 2. The nature of the dispute and the task of the Court 34

(a) The alleged "political nature" of the dispute as presented by Libya 34
(b) The nature of the dispute: "territorial" or "boundary"? 35
(c) The *compétence ratione materiae* of the Court 36
(d) The extent of the Court's powers 36
(e) The applicable law 37
(f) The order of questions submitted to the Court 38

PART II. THE ISSUE OF THE TREATY BASIS OF THE BOUNDARY 41

CHAPTER IV. THE DIFFERING POSITIONS OF THE PARTIES CONCERNING THE EXISTENCE OF A CONVENTIONAL BOUNDARY 41

Section 1. The two positions compared 41
Section 2. Deceptive points of agreement and disagreement concerning the 1955 Treaty 42
Section 3. UN General Assembly Resolution 392(V) of 15 December 1950. 44

CHAPTER V. THE MEANING OF ARTICLE 3 OF THE 1955 TREATY 53

Section 1. Introduction 53
Section 2. The Treaty's object and purpose 56
Section 3. Ordinary meaning of the terms of Article 3 58
Section 4. Context of Article 3 75

(a) The 1956 Agreement 75
(b) The 1955 Convention 76

Page

- *(c)* Other elements within the context of the 1955 Treaty 83
  - (i) UN maps 84
  - (ii) Libyan petroleum regulation No. 1 and map No. 1 of 14 August 1955 84
  - (iii) Statement of Prime Minister Ben Halim on 14 October 1955 87
  - (iv) Failure to register the 1955 Treaty under Article 102 of the UN Charter 88
  - (v) The 1955 Treaty's 20-year term 90
- *(d)* 1966 Libya-Chad Accord 90

Section 5. *Travaux préparatoires* 93

- *(a)* Preliminary comments 93
- *(b)* The CC-M's incorrect and inadequate treatment of the *travaux* 95
- *(c)* Additional *travaux* from the French diplomatic archives 104

CHAPTER VI. THE BOUNDARY *STATUS QUO* ON THE CRITICAL DATE AS RECOGNISED IN ACCORDANCE WITH THE CRITERIA OF ARTICLE 3 OF THE 1955 TREATY 106

Section 1. Introduction 106
Section 2. 1899 Declaration 109
Section 3. The 1900-1902 Accords 122
Section 4. 1902 Anglo-Italian Accord 138
Section 5. Treaty of Ouchy (1912); 1912 Franco-Italian Agreement 141

- *(a)* Introduction 141
- *(b)* The role of the 1912 Treaty of Ouchy in the settlement of the present dispute 143
- *(c)* 1912 Franco-Italian Agreement (Tittoni-Poincaré) 146
  - (i) Ordinary meaning 146
  - (ii) Object and purpose - context 148
  - (iii) *Travaux préparatoires* 152
  - (iv) Subsequent conduct 156
    - (A) Conduct of France and Italy: officially published maps 158
    - (B) Impending negotiations (1912-1914): between France and the Ottoman Empire and, then, France and Italy 168
    - (C) Franco-Italian delimitation negotiations 171
    - (D) The 1928 attempt of the French Government to obtain Italian recognition of the 1899 Declaration (as modified in 1919) and of the 1900-1902 Accords 175

Section 6. 1915 Secret Treaty of London 176
Section 7. 1919 Anglo-French Convention (8 September) 177

- *(a)* Ordinary meaning of the text in its context and in the light of its object and purpose 177
  - (i) Text and context 179
  - (ii) Object and purpose 184
- *(b)* Non-opposability of the 1919 Convention to Italy 186
- *(c)* The 1919 line in the light of Article 3 of the 1955 Treaty 189
- *(d)* The unaccounted for segment of the conventional boundary claimed by Chad: West of the Tropic of Cancer (and 16°E) to the border with Niger 192

Section 8. 1919 Franco-Italian Accord (12 September) 197

Page

(*a*) The 1919 Franco-Italian Accord fixed the Western boundary of Libya between Ghadamès and Toummo for the first time 198
(*b*) The Accord's relationship to Article 13 of the 1915 Treaty of London 200
(*c*) Libya's right to invoke France's unpaid debt in respect to Libya's southern boundary 201

Section 9. 1924 Anglo-French Protocol and Declaration 201
Section 10. Period of Italian protests, Anglo-French replies and Franco-Italian proposals and negotiations: 1919-1935 206

(*a*) Introduction 206
(*b*) The diametrically opposed views of the British and French Governments over the meaning and effect of the 1919 Convention 209
(*c*) The contention that Italy had no right to protest the 1919 Convention 215
(*d*) The "Mock War" between the Italian Ministry of Foreign Affairs and Ministry of Colonies 217
(*e*) 1930 Italian school map atlas incident 220
(*f*) The consistency of Italian conduct in protesting and rejecting the 1919 Convention and in protesting French military incursions north of a strict southeast line 223
(*g*) French conduct during the period revealing the French Government's awareness that there was no conventional Libyan boundary East of Toummo 224

Section 11. The 1935 Franco-Italian Settlement. 225

(*a*) Introduction 225
(*b*) Recognition of the absence of any conventional boundary . . . 226
(*c*) Recognition of Italy's title to the territories to the north of the 1935 line 228
(*d*) The influence on the settlement of the present dispute of France's obligations to Italy under Article 13 of the 1915 Treaty of London 230
(*e*) Conclusion 232

Section 12. Post-1935 Agreements and events 233

(*a*) 1941 French-Italian Armistice Commission 234
(*b*) 1947 Italian Peace Treaty 238

(i) The 1947 Treaty and Article 13 of the 1915 Treaty of London 238
(ii) French proposals to modify Libya's alleged boundaries under Article 23 and Annex XI of the 1947 Treaty 238
(iii) France's failure to notify certain agreements under Article 44 of the 1947 Treaty 244

(*c*) 1949 Four Power Commission Report 244
(*d*) Article 4 of the 1951 Constitution of the United Kingdom of Libya 246

PART III. TITLE TO THE BORDERLANDS INDEPENDENTLY OF TREATIES 248

CHAPTER VII. TITLE TO THE TERRITORY PRIOR TO THE ARRIVAL OF THE FRENCH 248

Section 1. The borderlands were not *terra nullius* at the end of the 19th century 248
Section 2. The relevance of the *Western Sahara* case 249

(*a*) Did the Court intend to state a principle of general application? . 249

Page

(*b*) Is the Court's opinion consistent with Chad's argument that State practice and doctrine in the relevant period (1899-1914) show that the borderlands were properly regarded by France as *terra nullius*? 252

Section 3. The links between tribes such as the Toubou and the Awlad Sulaiman and the Senoussi 261
Section 4. The identity of the Indigenous inhabitants of the borderlands with Libya 264
Section 5. The basis of the early claims by the Ottoman Empire . . . 265
Section 6. The nature of "shared sovereignty" in this region 268
Section 7. The effect of the Treaty of Ouchy 270

CHAPTER VIII. THE FRENCH CLAIMS OF TITLE 272

Section 1. Chad's misuse of the notion of "inter-temporal" law 272
Section 2. The nature and extent of French occupation *(effectivités)* of the borderlands 273
Section 3. The invalidity of acquisition of title to territory by conquest post-1919 279

PART IV. CONSISTENCY OF CONDUCT AND THE ISSUE OF ACQUIESCENCE . . . 283

CHAPTER IX. CONDUCT OF THE OTTOMAN EMPIRE, THE SENOUSSI, FRANCE, BRITAIN, AND ITALY PRE-1945 283

Section 1. Introduction 283
Section 2. Ottoman conduct 288
Section 3. Senoussi conduct 290
Section 4. British conduct 292
Section 5. French conduct 297
Section 6. Italian conduct 300

CHAPTER X. SUBSEQUENT CONDUCT OF INTERESTED PARTIES UNTIL 1951 . . 304

Section 1. French conduct in Fezzan and the Libya/Chad borderlands . 305
Section 2. Senoussi conduct during World War II 305
Section 3. Treaty of peace with Italy and Four Power discussions on Libya 306
Section 4. United Nations consideration of Libya's boundaries 308

CHAPTER XI. CONDUCT OF LIBYA AND CHAD POST-1951 315

Section 1. Introduction 315
Section 2. Conduct of Libya and Chad in the context of their mutual relations 316
Section 3. The positions taken by Libya and Chad before the OAU . . 326
Section 4. Behaviour of Libya and Chad before the UN 329
Section 5. Conclusions 334

SUBMISSIONS 343

Annexes to the Reply of the Great Socialist People's Libyan Arab Jamahiriya

Supplementary Annexes

**Annex 1*. Explanatory Guide to Abbreviated References 346

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* Only those annexes preceded by an asterisk have been reproduced below. *[Note by the Registry.]*

* Seules les annexes précédées d'un astérisque ont été reproduites. *[Note du Greffe.]*

Page

**Annex 2*. Commentary on the CC-M, Chapter 10, and Chad's Map Atlas . . 349
**Annex 3*. "The Role of the Sanusi in the Central Sahara" 376
**Annex 4*. The Direction of the Southeast Line under Article 3 of the 1899 Declaration 397
**Annex 5*. The "Mock War" between the Italian Ministries of Colonies and of Foreign Affairs; The Italian School Map Atlas Incident 402
  **5.1*. 17 April 1924. Translation of a Telegram from the Ministry of Colonies to the Ministry of Foreign Affairs (CC-M, Annex 60) 406
  **5.2*. 18 July 1924. Translation of a Note from the Ministry of Colonies to the Ministry of Foreign Affairs (CC-M, Annex 61) 406
  **5.3*. 4 August 1924. Translation of a Note from the Minister of Foreign Affairs to the Minister of Colonies and translation of Minutes of the 5th Inter-Ministerial Meeting Referred to Therein 412
  5.4. Mussolini-Beaumarchais Meetings 1928-1929 as Recorded by Ambassador Beaumarchais (CC-M, Annex 63)
  **5.5*. 4 March 1930. Translation of a Dispatch from the Minister of Foreign Affairs to the Italian Ambassador in Paris (CC-M, Annex 117) 418
  **5.6*. 6 March 1930. Translation of a Note from the Italian Ambassador in Paris to the Minister of Foreign Affairs (CC-M, Annex 64) 427
  **5.7*. 3 April 1930. Translation of a Note from the Italian Ministry of Colonies to the Ministry of Foreign Affairs (CC-M, Annex 65) 429
  **5.8*. 18 April 1930. Translation of a Telegram from the Italian Minister of Foreign Affairs to the Italian Embassy in Paris (CC-M, Annex 66) . . . 433
  **5.9*. Meeting at Palazzo Chigi on 16 July 1930 (Translation) (CC-M, Annex 68) 436
  **5.10*. Translation of Documents Relating to the School Map Atlas Incident (1930-1931) (Map LR 16E) 445
  **5.11*. 12 May 1932. Translation of a Letter of Commandant Guariglia to the Italian Embassy in Paris (CC-M, Annex 71) 454
**Annex 6*. Commentary on Documents from Quai d'Orsay Archives 460
  **6.1*. Documents Pertaining to G.A. Resolution 392(V) of 15 December 1950 462
  **6.2*. Document Revealing French Participation in the Preparation of Libya's Constitution Promulgated on 7 October 1951 463
  **6.3*. French Studies between 1951 and 1955 concerning Libya's Boundaries 464
  **6.4*. Documents Bearing on the January 1955 Negotiations in Paris . . . 468
  **6.5*. Border Incidents, Including those Intervening between the January and July Negotiations, such as the Moya (or Aouzou) Episode 471
  **6.6*. Documents Relating to the July-August 1955 Negotiations in Tripoli . 474
  **6.7*. Documents concerning Rectification of the Algerian Boundary, Ratification of the 1955 Treaty and Subsequent Attempts to Demarcate the Algerian Boundary 485
  **6.8*. Documents Bearing on the Failure of the French Government to Register the 1955 Treaty under Article 102 of the UN Charter 491
  **6.9*. Documents Relating to Subsequent Boundary Developments . . . 494
  **6.10*. Documents Relating to Maps Showing Libya's Boundaries . . . 499
**Annex 7*. Commentary on Documents from the French Archives, Vincennes (with Illustrative Map LR 43) 509
  **7.1*. Extracts from the History of the French Military Post at Tekro . . . 513
  **7.2*. Extracts from the Diary concerning French Military Occupation of Wour 514

Page

7.3. 1933 French Military Study of Establishment of Plan of Defense of Tibesti 515
7.4. Special Study (Continuation of Annex 3 Study) concerning « La réduction d'un centre de rebellion à Modra » (1933) 516
7.5. Series of Reports 1911-1922 of "Tournees" Undertaken from Bilma 517
7.6. Dispatch of 5 April 1955 from the Governor General of Algeria to the Minister of Interior 518
7.7. Extract from the 1934 Report of Captain Vicaire on the Defense of Tibesti 519
7.8. Report of 20 December 1954 concerning the *Régime frontalier* in the Niger-Libya Frontier Sector 520
7.9. *Note d'information* of 12 April 1955 concerning « Visées étrangères » over the Fezzan-French Frontier Region, including a Discussion of the "Aouzou Incident" 521
7.10. Boundary Study by Captain Lehuraux dated 26 May 1931 : Algeria-AOF-Libya 522

Annex 8. Commentary on Ottoman Documents from Prime Minister's Archives, Istanbul 524
8.1. Council of State Document No. 331, dated 25 May 1883 526
8.2. Letter Signed by the Grand Vizier, dated 11 April 1884, to which a Report of 15 August 1884 from the Vilayet of Benghazi is Attached, and Letter from the Governor of Tripoli, dated 15 September 1884 527
8.3.1-8.3.2. Orders Issued by the Imperial Private Secretary dated 17 April 1886 and 15 October 1888 528
8.4. Memorandum dated 9 April 1889 Prepared by the Chiefs of Staff Commission Appraising a Recent Report from the Vilayet of Tripoli . . 529
8.5.1-8.5.2. Two Reports of the Imperial General Staff dated 4 July 1891 and 11 February 1892 530
8.6.1-8.6.2. Reports from Benghazi and Tripoli of 6 and 7 July 1899 Assessing French Designs in the Light of the Recently Signed 1899 Declaration between Great Britain and France 532

Annex 9. Commentary on Documents from Quai d'Orsay File : N.S. Turquie 422, Dossier I 533
9.1. Résumé historique 1890-1909, Note of Lt. De Brancion, détaché au service géographique du département (l'arrière-pays de la Tripolitaine), 1909 535
9.2. Note sur l'activité des Turcs dans le Tibesti, 25 April 1910 536
9.3. M. le ministre des colonies à M. le ministre des affaires étrangères (Caimakan du Tibesti), 27 June 1910 537
9.4. Le chargé d'affaires de France à Constantinople à M. le ministre des affaires étrangères (la nomination d'un Kaimacam au Tibesti), 22 July 1910 538
9.5. Général, directeur des services militaires to the sous-chef du Bureau de l'Afrique et du Service géographique et des missions (une opération dans le Tibesti-Borkou), 15 November 1910 539
9.6. Note from the présidence de la République (Tibesti et Borkou), 14 February 1911 540
9.7. M.G. Lelorrain, vice consul de France à Benghazi to M. Cruppi, ministre des affaires étrangères, together with a Note : « Situation actuelle des Senoussis », 6 March 1911 541
9.8. Note for the ministre des affaires étrangères (délimitation de la Tripolitaine, affaires du Tibesti), 13 March 1911 542

Page

9.9. Consul général de France à Tripoli de Barbarie to M. Cruppi, ministre des affaires étrangères, 6 April 1911 544

9.10. L'ambassadeur de France à Constantinople to M. le ministre des affaires étrangères (renseignements sur le Tibesti), 9 May 1911 546

**Annex 10.* Commentary on Documents from Quai d'Orsay File: N.S. Turquie 422, Dossier II 547

10.1. Ambassade impériale ottomane to M. de Selves, ministre des affaires étrangères, 17 July 1911 550

10.2. Capitaine Ducla, commandant le cercle de Bilma, to lieutenant-colonel, commandant le territoire militaire du Niger, 12 May 1911 551

10.3. Ministre des colonies to M. le ministre des affaires étrangères (Turcs au Tibesti), 30 October 1911 552

10.4. Note pour le ministre des affaires étrangères (l'occupation du Tibesti et du Borkou), 13 April 1912. 553

10.5. Ministre des colonies to M. le ministre des affaires étrangères (le Tibesti et le Borkou), 6 May 1912 554

10.6. Telegram (No. 128) from Colonel Largeau, 27 May 1912 555

10.7. Telegram (No. 126) from Colonel Largeau, 30 May 1912 555

10.8. Telegram (No. 133T) from Colonel Largeau, 30 May 1912 555

10.9. M.A. de France, ministre de France en Egypte, to M. R. Poincaré, président du Conseil, ministre des affaires étrangères, 26 June 1912 557

10.10. Translation of Response from Cheikh des Senoussya to Letter from M. Bonnel de Mézières, 10 Zil Qada 1329 557

10.11. Ministre des colonies to M. le président du Conseil, ministre des affaires étrangères, 1 August 1912 558

10.12. Gouverneur général de l'Afrique équatoriale française to M. le ministre des colonies (l'Ennedi), 25 June 1912 559

10.13. Ministre des colonies to M. le président du Conseil, ministre des affaires étrangères, au sujet du Borkou, 26 August 1912 560

10.14. Note au sujet du Borkou pour le ministre des affaires étrangères, 5 September 1912 560

10.15. Ministre des colonies to M. le président du Conseil, ministre des 56affaires étrangères, 8 November 1912 560

10.16. Gérant de l'agence diplomatique de France en Egypte to M. R. Poincaré, président du Conseil, ministre des affaires étrangères à Paris, 16 October 1912. 561

10.17. Ambassadeur de France à Constantinople to M. le ministre des affaires étrangères, 9 December 1912 561

10.18. Telegram dated 17 November 1912 to the Sultan from 48 Cheikh Senoussi de Tripoli, Homs et Benghazi, 9 December 1912 (Translation) . 561

10.19. Telegram Sent from Fort Lamy to the ministère des colonies à Paris, 13 December 1912 562

10.20. Ministre des colonies to ministre des affaires étrangères (Borkou et Tibesti), 30 December 1912 563

10.21. L'ambassadeur de France à Constantinople to M. le ministre des affaires étrangères (l'action ottomane dans le Sahara oriental), 24 January 1913 564

10.22. M. A. de France, ministre de France en Egypte, to M. S. Pichon, ministre des affaires étrangères à Paris, 1 May 1913. Dispatch No. 196 565

10.23. Annex to Dispatch No. 196 from the Agence diplomatique de France au Caire dated 2 May 1913 (Translation) 565

Page

**10.24.* M. A. de France, ministre de France en Egypte, to M. Doumergue, président du Conseil, ministre des affaires étrangères à Paris, 14 March 1914 567
**10.25.* Annex to Dispatch No. 128 from Cairo dated 14 March 1914 (Translation) 568
**Annex 11.* Commentary on Documents from French Archives, Aix-en-Provence 569

Réplique du Gouvernement de la République du Tchad — Reply of the Government of the Republic of Chad

INTRODUCTION. OBJET ET PLAN DE LA RÉPLIQUE 576

CHAPITRE I. LA PRÉSENTATION DES THÈSES DES PARTIES À LA COUR 578

- Section 1. L'étonnante thèse libyenne sur le rôle respectif des forums politiques et judiciaires 579
  - *a)* Les conséquences juridiques du silence gardé dans les enceintes politiques 580
  - *b)* Les conséquences juridiques des positions exprimées dans les enceintes politiques 583
  - *c)* La distinction rigide faite par la Libye entre forums politiques et forums judiciaires est totalement artificielle 585
- Section 2. La production de documents devant la Cour 587
  - *a)* Accès aux archives du ministère des affaires étrangères de la République française 587
  - *b)* Authenticité des annexes et productions présentées par la République du Tchad 588
- Section 3. Les « trois thèses » tchadiennes (leur concordance, leur articulation et leur autonomie) 590

CHAPITRE II. L'OPPOSABILITÉ À L'ITALIE (ET À LA LIBYE) DE LA DÉLIMITATION DE 1899-1919 596

- Section 1. La portée de la déclaration de 1899 par rapport à la Turquie 598
  - 1. La notion d'hinterland 599
  - 2. L'inconsistance des prétentions turques (et libyennes) au regard de la théorie de l'hinterland 602
    - *a)* La Turquie n'a pas acquis de droits souverains sur la zone revendiquée par la Libye 602
    - *b)* Les puissances, et en particulier l'Italie, n'ont jamais accepté les prétentions turques sur l'« hinterland » de la Tripolitaine 604
- Section 2. L'acceptation par l'Italie des frontières de la Tripolitaine et des délimitations franco-britanniques 612
  - 1. L'opposabilité à l'Italie des frontières de la Tripolitaine et de la délimitation franco-britannique de 1899 614
    - *a)* Les accords de 1900 et 1902 ont rendu opposables à l'Italie les frontières de la Tripolitaine et les zones d'influence française et britannique 615
    - *b)* L'Italie — et, par la suite, la Libye — sont liées par cette reconnaissance 625

Page

2. L'opposabilité à l'Italie de la délimitation franco-britannique de 1919 . . . 626
    - *a)* Du fait des accords de 1900 et 1902, l'Italie n'était pas juridiquement fondée à protester contre la délimitation franco-britannique de 1919 . . . 627
    - *b)* L'Italie a confirmé, après l'éviction de la Turquie, ses engagements de 1900 et 1902 . . . 630

CHAPITRE III. LA PORTÉE DE L'ARTICLE 13 DE L'ACCORD DE LONDRES DE 1915 ET LA SUCCESSION DE LA LIBYE À L'ITALIE . . . 635

Section 1. L'article 13 de l'accord de Londres de 1915 . . . 637
- *a)* L'article 13 ne contenait qu'un engagement non exécutoire . . 637
- *b)* L'article 13 n'envisageait que des cessions territoriales . . . 641

Section 2. La confirmation de la portée de l'article 13 de l'accord de 1915 par l'accord Laval-Mussolini de 1935 . . . 646
- *a)* Le texte et le contexte de l'article 2 . . . 647
- *b)* Les cartes annexées au traité . . . 648

Section 3. L'extinction des droits que l'Italie pouvait tirer de l'accord de Londres par l'article 23 du traité de paix de 1947 . . . 650
- *a)* Le texte du traité . . . 650
- *b)* Les travaux préparatoires . . . 653
- *c)* Les analyses doctrinales . . . 656

CHAPITRE IV. LA CONSOLIDATION PROGRESSIVE DU TITRE FRANÇAIS PUIS TCHADIEN . . . 661

Section 1. De la sphère d'influence au territoire colonial . . . 664
1. Le caractère transitoire des zones d'influence . . . 665
2. La consolidation réalisée par l'occupation française et l'attitude des autres Etats concernés . . . 667
    - *a)* Les conséquences de l'occupation effective française . . . 667
    - *b)* Les Etats concernés ont réagi en pleine connaissance de cause . 672

Section 2. De la limite des sphères d'influence à la frontière coloniale . 675

CHAPITRE V. BONNE FOI ET DROIT DES TRAITÉS — LA PORTÉE DU TRAITÉ FRANCO-LIBYEN DU 10 AOÛT 1955 . . . 680

Section 1. Les origines et les travaux préparatoires du traité du 10 août 1955 681
1. Les travaux préparatoires au traité du 10 août 1955 . . . 682
    - *a)* Le manque de travaux préparatoires concernant le stade final des négociations (juillet-août 1955) . . . 682
    - *b)* L'absence quasi-totale d'archives libyennes relatives à la négociation du traité du 10 août 1955 . . . 685
2. La résolution 392 (V) de l'Assemblée générale des Nations Unies et le traité du 10 août 1955 . . . 687
3. La bonne foi et la négociation du traité du 10 août 1955 . . . 691

Section 2. L'interprétation du traité franco-libyen . . . 692
1. La Libye recourt à des méthodes insolites d'interprétation . . . 693
2. La notion d'« actes internationaux en vigueur » . . . 696

Page

CONCLUSIONS DE LA RÉPUBLIQUE DU TCHAD 701

Annexes à la réplique du Gouvernement de la République du Tchad

**Annexe R/T 1*. 29 mars 1890. Traduction partielle de la lettre de l'ambassadeur d'Italie à Paris au ministre des affaires étrangères 704

**Annexe R/T 2*. 9 février 1891. Traduction partielle de la dépêche de l'ambassadeur d'Italie à Paris au ministre italien des affaires étrangères . . 706

Annexe R/T 3. 24 janvier 1899. Note sur la délimitation des zones d'influence anglaise et française

Annexe R/T 4. 6 février 1899. Télégramme de M. Paul Cambon, ambassadeur de France à Londres au ministre des affaires étrangères

Annexe R/T 5. 14 mars 1899. Anglo-French Agreement — Record of Negotiations. Remarks on M. Cambon's Counter-Draft handed to Sir Thomas Sanderson

**Annexe R/T 6*. Sénat (Italie), séance du 24 avril 1899. Traduction partielle des extraits des débats parlementaires 708

**Annexe R/T 7*. 14 mai 1899. Traduction partielle de la lettre du consul d'Italie à Tripoli au ministre italien des affaires étrangères 716

Annexe R/T 8. 13 juillet 1899. Lettre du ministre des colonies au ministre des affaires étrangères

Annexe R/T 9. 5 septembre 1899. Lettre de M. Rais, gérant du consulat général de France à Tripoli de Barbarie à M. Delcassé, ministre des affaires étrangères

Annexe R/T 10. 13 janvier 1902. Telegrams from Lord Currie to Lord Lansdowne enclosing a draft declaration from the Italian Foreign Minister

Annexe R/T 11. 16 janvier 1902. Telegram from Lord Lansdowne to Lord Currie

Annexe R/T 12. 21 janvier 1902. Telegram from Lord Currie to Lord Lansdowne

Annexe R/T 13. 24 janvier 1902. Telegram from Lord Lansdowne to Lord Currie

Annexe R/T 14. 12 février 1902. Telegram from Lord Lansdowne to Lord Currie

Annexe R/T 15. 19 février 1902. Telegram from Lord Lansdowne to Lord Currie

Annexe R/T 16. 21 février 1902. Telegram from Lord Currie to Lord Lansdowne

Annexe R/T 17. 19 février 1910. Dépêche de l'ambassade de France à Rome au ministre des affaires étrangères

Annexe R/T 18. 25 avril 1910. Traduction intégrale de la lettre de l'ambassadeur d'Italie à Paris au ministre des affaires étrangères

Annexe R/T 19. 31 janvier 1911. Dépêche de M. Lelorrain, vice-consul de France à Benghazi à Son Exc. M. le ministre des affaires étrangères

Annexe R/T 20. 31 janvier 1911. Dépêche de Benghazi au ministre des colonies

Annexe R/T 21. 1^er^ février 1911. Télégramme du ministre des affaires étrangères au consul de France à Benghazi

Annexe R/T 22. 18 février 1911. Dépêche du gouverneur général de l'AEF à M. le ministre des colonies

Annexe R/T 23. 12 octobre 1911. Foreign Office Memorandum et carte italienne

Annexe R/T 24. 27 octobre (?) 1912. Lettre du ministre des colonies au président du Conseil, ministre des affaires étrangères

Annexe R/T 25. 24 janvier 1913. Dépêche de l'ambassadeur de France à Constantinople au ministre des affaires étrangères

Annexe R/T 26. 3 avril 1913. Note du ministre des colonies au gouverneur de l'AOF

Page

Annexe R/T 27. 5 juin 1913. Lettre du ministre des colonies au ministre des affaires étrangères

Annexe R/T 28. 12 décembre 1914. Chambre des députés (Italie), séance du 12 décembre 1914. Traduction partielle des extraits des débats parlementaires

Annexe R/T 29. 13 décembre 1914. Dépêche de l'ambassadeur anglais à Rome au ministre anglais des affaires étrangères

**Annexe R/T 30.* 16 février 1915. Traduction partielle du document diplomatique italien nº 816 intitulé « Le ministre des affaires étrangères, Sonnino, à l'ambassadeur à Londres, Imperiali » 718

**Annexe R/T 31.* 23 mars 1915. Traduction partielle du document diplomatique italien nº 172 intitulé « L'ambassadeur à Paris, Tittoni, au ministre des affaires étrangères, Sonnino » 720

**Annexe R/T 32.* 14 avril 1915. Traduction partielle du document diplomatique italien nº 333 intitulé « L'ambassadeur à Londres, Imperiali, au ministre des affaires étrangères, Sonnino » 722

**Annexe R/T 33.* 15 avril 1915. Traduction partielle du document diplomatique italien nº 338 intitulé « Le ministre des affaires étrangères, Sonnino, aux ambassadeurs à Londres, Imperiali, à Paris, Tittoni, et à Petrograd, Carlotti » 725

**Annexe R/T 34.* 18 avril 1915. Traduction partielle du document diplomatique italien nº 378 intitulé « L'ambassadeur à Londres, Imperiali, au ministre des affaires étrangères, Sonnino » 728

**Annexe R/T 35.* 21 avril 1915. Traduction partielle du document diplomatique italien nº 402 intitulé « Le ministre des affaires étrangères, Sonnino, aux ambassadeurs à Londres, Imperiali, à Paris, Tittoni et à Pétrograd, Carlotti » 731

**Annexe R/T 36.* 21 avril 1915. Traduction partielle du document diplomatique italien nº 404 intitulé « L'ambassadeur à Paris, Tittoni, au ministre des affaires étrangères, Sonnino » 733

**Annexe R/T 37.* 21 avril 1915. Traduction intégrale du document diplomatique italien nº 409 intitulé « L'ambassadeur à Paris, Tittoni, au ministre des affaires étrangères, Sonnino » 736

Annexe R/T 38. 24 avril 1915. Traduction intégrale du document diplomatique italien nº 448 intitulé « L'ambassadeur à Paris, Tittoni, au ministre des affaires étrangères, Sonnino »

Annexe R/T 39. 10 mars 1919. British and Italian Claims on the Western and Northern Darfur Border

Annexe R/T 40. 15 mars 1919. *The Sollum, Siwa Frontier*, Documents d'archives du Foreign Office britannique

Annexe R/T 41. 28 mai 1919. PV de la Commission coloniale, conférence des préliminaires de paix

Annexe R/T 42. 29 juillet 1922. *Wadai-Darfur Boundary*, Documents d'archives du Foreign Office britannique

Annexe R/T 43. 5 mars 1923. *Wadai-Darfur Boundary*, Documents d'archives du Foreign Office britannique

Annexe R/T 44. Janvier 1928. Note rédigée par M. Bruère pour préciser les bases d'un arrangement franco-italien en Afrique

Annexe R/T 45. 12 juillet 1928. Note remise à M. Duchêne, directeur des affaires politiques au ministère des colonies à la suite d'une conversation avec M. de Beaumarchais et M. de Saint-Quentin

Page

Annexe R/T 46. 1er juin 1929. Télégramme de M. de Beaumarchais, ambassadeur de France à Rome au ministre des affaires étrangères

Annexe R/T 47. 30 juin 1929. Télégramme de M. de Beaumarchais, ambassadeur de France à Rome au ministre des affaires étrangères

Annexe R/T 48. 25 juillet 1929. Lettre de l'ambassadeur de France à Rome au ministre des affaires étrangères

Annexe R/T 49. 7 août 1929. Lettre du ministère des colonies au gouverneur général de l'AEF

Annexe R/T 50. 8 octobre 1929. Lettre de l'ambassadeur de France à Rome au président du Conseil, ministre des affaires étrangères à laquelle est jointe la traduction d'une lettre du 7 octobre 1929 de M. Mussolini

Annexe R/T 51. Mai 1930. « Afrique équatoriale française : le rattachement du Tibesti à l'Afrique équatoriale française », *B.C.A.F.*, p. 281-282

Annexe R/T 52. 1er mars 1931. Newbold (D.), « The Southern Frontiers of Italian Libya »

Annexe R/T 53. 20 octobre 1931 ? Deux cartes des liaisons radiotélégraphiques en Afrique équatoriale française

Annexe R/T 54. 25 novembre 1931. Lettre du secrétaire perpétuel de l'Académie des sciences coloniales au gouverneur de l'AOF à laquelle est jointe une délibération de cette académie

Annexe R/T 55. 8 mars 1934. *Italian Claim to Owenat and Sarra Triangle*, Documents d'archives du Foreign Office britannique

**Annexe R/T 56*. 1934. Traduction partielle de Toscano (M), *Il Patto di Londra, Bologna*, (extraits), p. 53, 161 et 162 739

Annexe R/T 57. 1934. Situation politique de la circonscription du BET (2e trimestre 1934)

Annexe R/T 58. 22 mars 1935 et 25 mai 1935. Cartes annexées au texte du traité Laval-Mussolini reproduites dans les actes parlementaires italiens. *Camera dei Deputati ;* Disegno di Legge di B. Mussolini, 22 marzo 1935, doc. 545 ; *Senato della Repubblica*, Disegno di Legge, 25 maggio 1935, doc. 666

Annexe R/T 59. 16 décembre 1938. Circular Telegraph to the Governments of Canada, Commonwealth of Australia, New Zealand, Union of South Africa and Eire

Annexe R/T 60. 25 avril 1941. Le général Parisot à M. le ministre, secrétaire d'Etat à la guerre

Annexe R/T 61. 25 juin 1946. Lettre de l'ambassadeur italien, Tarchiani, au secrétaire d'Etat des Etats-Unis

Annexe R/T 62. 31 juillet 1946. Byrnes-Nenni conversation

**Annexe R/T 63*. 19 août 1946. Conférence de la paix (Paris). Mémorandum sur les territoires italiens en Afrique 741

Annexe R/T 64. 5 octobre 1946. Reports of the Commissions. Reports on the Draft Peace Treaty with Italy. Report of the Political and Territorial Commission of Italy in *The Foreign Relations of the United States*, 1946, Vol. IV, (extraits), p. 301-304 et 328-329

**Annexe R/T 65*. 10 février 1947. Traité de paix avec l'Italie (extraits) . . 746

**Annexe R/T 66*. 13 mars 1948. Note par laquelle le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a notifié au Gouvernement italien, conformément à l'article 44 du traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre dont le Royaume-Uni désire le maintien ou la remise en vigueur . . . 753

Page

**Annexe R/T 67.* 1er mai 1948. Note par laquelle le Gouvernement de l'Union sud-africaine a notifié au Gouvernement italien, conformément à l'article 44 du traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre dont l'Union sud-africaine désire le maintien ou la remise en vigueur 761

Annexe R/T 68. 7 août 1948. Lettre du ministre des affaires étrangères à M. l'ambassadeur de France à Londres

**Annexe R/T 69.* 7 janvier 1949. Note par laquelle le Gouvernement australien a notifié au Gouvernement italien, conformément à l'article 44 du traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre que l'Australie désire maintenir ou remettre en vigueur . 767

**Annexe R/T 70.* 16 août 1949. Note par laquelle le Gouvernement des Pays-Bas a notifié au Gouvernement italien, conformément à l'article 44 du traité de paix avec l'Italie, signé à Paris le 10 février 1947, les traités bilatéraux conclus antérieurement à la guerre entre les deux pays et dont les Pays-Bas désirent le maintien ou la remise en vigueur 773

Annexe R/T 71. 14 octobre 1949. Compte rendu analytique de la neuvième séance de la Sous-Commission 17 de la première Commission (A/C.1/SC.17/SR.9)

Annexe R/T 72. 17 octobre 1949. Compte rendu analytique de la dixième séance de la Sous-Commission 17 de la première Commission (A/C.1/SC.17/SR.10)

Annexe R/T 73. 18 octobre 1949. Summary Record of the Thirteenth Meeting of Sud-Committee 17 (A/C.1/SC.17/SR.13)

Annexe R/T 74. 8 décembre 1953. Lettre de M. Ravensdale (Benghazi) au Foreign Office

Annexe R/T 75. 24 ? décembre 1953. Lettre du Foreign Office à M. Ravensdale (Benghazi)

Annexe R/T 76. 19 janvier 1954. Note de M. Bromley au sujet du Fezzan

Annexe R/T 77. 10 novembre 1954. Note de M. Bromley au sujet des « Troupes françaises en Libye »

Annexe R/T 78. 20 novembre 1954. Note de M. Bromley au sujet de « La France et le Fezzan »

Annexe R/T 79. 5 janvier 1955. Dépêche de l'ambassade britannique à Paris

Annexe R/T 80. 6 janvier 1955. Notes de M. Anthony Nutting

Annexe R/T 81. 6 janvier 1955. Note de M. Bromley au sujet des « Négociations franco-libyennes »

Annexe R/T 82. 8 janvier 1955. Télégramme de l'ambassade britannique à Paris au Foreign Office

Annexe R/T 83. 13 janvier 1955. Lettre de M. K.M. Wilford, ambassade britannique à Paris, à M. P.T. Hayman, Foreign Office

Annexe R/T 84. 15 janvier 1955. Lettre de M. Ravensdale, ambassade britannique en Libye, à M. Bromley, Foreign Office

Annexe R/T 85. 19 janvier 1955. Note de M. Bromley sur le Fezzan. 22 janvier 1955. Lettre de M. Bromley au Commodore Lovegrove

Annexe R/T 86. 4 mars 1955. Télégramme n° 178/80 de Dumarcay à Paris sur l'incident d'Aozou. Note de protestation au Gouvernement libyen (la transcription de cette annexe a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 251-251.1)

Annexe R/T 87. 26 mars 1955. Télégramme n° 219 de Tripoli à Paris. Le Gouvernement italien précise la non-entrée en vigueur des Accords de Rome (la transcription de cette annexe a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 252-252.1)

Page

Annexe R/T 88. 1er juin 1955. Lettre de M. J.G.S. Beith à M. T.E. Bromley
Annexe R/T 89. 11 juin 1955. Note de L. Bromley sur « Le Fezzan »
Annexe R/T 90. 13 juin 1955. Note de L. Bromley au sujet d'un projet d'accord franco-libyen
Annexe R/T 91. 18 juin 1955. Télégramme de l'ambassade britannique à Paris à M. Bromley
Annexe R/T 92. 21 juin 1955. Lettre de M. J.G.S. Beith, ambassade britannique à Paris, au Foreign Office
Annexe R/T 93. 28 juin 1955. Télégramme nº 404/406 de Tripoli à Paris (la transcription de cette annexe a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 264-264.1)
Annexe R/T 94. 1er juillet 1955. Note de M. C.O.I. Ramsden et annotations diverses
Annexe R/T 95. 3 juillet 1955. Télégramme nº 418/22 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 96. 4 juillet 1955. Télégramme nº 427/29 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 97. 7 juillet 1955. Télégramme nº 433/34 de M. Dumarcay au ministre des affaires étrangères
**Annexe R/T 98*. 8 juillet 1955. Copies du télégramme nº 859 reçu de Insafen et du télégramme nº 224 adressé à Insafen par le commandant H. Robert. 778
Annexe R/T 99. 12 juillet 1955. Note de M. C.O.I. Ramsden et cartes
Annexe R/T 100. 16 juillet 1955. Télégramme nº 3526 de M. Chauvel au ministre des affaires étrangères
Annexe R/T 101. 19 juillet 1955. Télégramme de M. Massigli à l'Ambafrance Londres, communiqué à la Legafrance Tripoli
Annexe R/T 102. 19 juillet 1955. Télégramme de la légation de France en Libye au ministre des affaires étrangères
Annexe R/T 103. 20 juillet 1955. Télégramme nº 3564 de M. Chauvel au ministre des affaires étrangères
**Annexe R/T 104*. 20 juillet 1955. Lettre du ministre de la France d'outre-mer à M. le ministre des affaires étrangères 780
Annexe R/T 105. 21 juillet 1955. Télégramme nº 458/461 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 106. 21 juillet 1955. Télégramme nº 462/463 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 107. 21 juillet 1955. Note de M. J.F.S. Phillips et annotations diverses
Annexe R/T 108. 22 juillet 1955. Télégramme de M. Maurice Shumann adressé à L'Ambafrance Londres et communiqué aux Ambafrance, Le Caire, Washington et Rome et à la Legafrance, Tripoli
Annexe R/T 109. 23 juillet 1955. Télégramme nº 467/479 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 110. 24 juillet 1955. Télégramme nº 482/492 de M. Dumarcay au ministre des affaires étrangères
Annexes R/T 111. 25 juillet 1955. Note pour le président au sujet de la négociation d'un traité d'amitié et de bon voisinage entre la France et la Libye
Annexe R/T 112. 26 juillet 1955. Télégramme du ministre des affaires étrangères à la Légation de France à Tripoli
Annexe R/T 113. 26 juillet 1955. Télégramme nº 494 de M. Dumarcay au ministre des affaires étrangères

Page

Annexe R/T 114. 26 juillet 1955. Télégramme du ministre des affaires étrangères à la Legafrance, Tripoli, communiqué à Londres
Annexe R/T 115. 27 juillet 1955. Télégramme du ministre des affaires étrangères à la Legafrance, Tripoli
Annexe R/T 116. 27 juillet 1955. Dépêche de M. T.F. Bromley
Annexe R/T 117. 28 juillet 1955. Télégramme de la Legafrance à Tripoli au ministre des affaires étrangères
Annexe R/T 118. 29 juillet 1955. Télégramme nos 510 à 512 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 119. 30 juillet 1955. Télégramme du ministre des affaires étrangères à la Legafrance, Tripoli
Annexe R/T 120. 30 juillet 1955. Dépêche de l'ambassade britannique en Libye
Annexe R/T 121. 1er août 1955. Télégramme n° 522/29 de la Legafrance, Tripoli au ministre des affaires étrangères
Annexe R/T 122. 1er août 1955. Télégramme n° 529 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 123. 2 août 1955. Télégramme de Tripoli au résident général à Tunis
Annexe R/T 124. 2 août 1955. Télégramme nos 538 à 546? de Tripoli au ministre des affaires étrangères
Annexe R/T 125. 4 août 1955. Télégramme n° 548/551 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 126. 6 août 1955. Télégramme de M. Massigli à Tripoli
Annexe R/T 127. 7 août 1955. Télégramme n° 572/80 de M. Dumarcay au ministre des affaires étrangères
Annexe R/T 128. 7 août 1955. Télégramme n° 585/90 de M. Dumarcay à M. Massigli
Annexe R/T 129. 8 août 1955. Télégramme n° 611/13 du ministre des affaires étrangères à la Legafrance, Tripoli
**Annexe R/T 130.* Août 1955. Aide-mémoire sur les négociations franco-libyennes 782
Annexe R/T 131. 12 août 1955. Télégramme du ministre des affaires étrangères à l'Ambafrance Londres
Annexe R/T 132. 12 août 1955. Télégramme du ministre des affaires étrangères à l'Ambafrance Washington
Annexe R/T 133. 16 août 1955. Lettre de M. T.E. Bromley, Foreign Office, à l'ambassade britannique à Paris
Annexe R/T 134. Août 1955? Tableau comparatif des positions française et libyenne de janvier 1955 avec le traité du 10 août 1955 et indiquant la renonciation de la Libye à toute prétention sur le Tibesti (les extraits de ce tableau ont été publiés dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 269-269.3)
Annexe R/T 135. 20 août 1955. Lettre n° 7006 du gouverneur général de l'Algérie au ministre des affaires étrangères (la transcription partielle de cette lettre a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 270-270.3)
Annexe R/T 136. Août 1955. Note pour le président au sujet de l'évolution des négociations franco-libyennes
Annexe R/T 137. 11 octobre 1955. Lettre n° 1690 du ministre de la défense au ministre des affaires étrangères (la transcription partielle de cette lettre

Page

a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 274-274.2)
Annexe R/T 138. 8 décembre 1955. Note de M. J.F.S. Phillips
Annexe R/T 139. 22 février 1956. Télégramme n° 102/107 de Tripoli à Paris (la transcription partielle de ce télégramme a été publiée dans le livre IV du mémoire du Gouvernement de la République du Tchad, p. 275-275.2)
**Annexe R/T 140.* Villard (H.S.), *Libya, The New Arab Kingdom of North Africa*, Cornell University Press, 1956, p. XI, 2 et 3, 140-141 et 148-151. 787
Annexe R/T 141. 1er octobre 1957. Lettre du capitaine Planchon, chef de district du Tibesti à Zouar, à M. le chef de région du BET à Largeau
Annexe R/T 142. 20 février 1958. Lettre du chef de district du Tibesti à Bardai à M. le chef de région du BET à Bardeau
Annexe R/T 143. 1er mars 1958. Lettre du chef de région du BET à M. le chef du territoire du Tchad
Annexe R/T 144. 12 mars 1958. Note du ministre des finances du territoire du Tchad au ministre des affaires économiques à laquelle est jointe un câble n° 614/CAB.I. adressé au ministre du Sahara
Annexe R/T 145. 27 mars 1958. Lettre du chef du territoire du Tchad, officier de la légion d'honneur, compagnon de la libération à M. Largeau, chef de la région du BET
Annexe R/T 146. 10 juillet 1958. Lettre du chef de district du Tibesti à Bardai, à M. le chef du territoire du Tchad à Fort-Lamy
Annexe R/T 147. 29 novembre 1972. Agence tchadienne de presse (ATP) n° 2636, (extraits), p. 1-20
Annexe R/T 148. 30 novembre 1972. ATP n° 2637 (extraits), p. 1-3, n° 2636
Annexe R/T 149. 1er décembre 1972. ATP n° 2638 (extraits), p. 1-13
Annexe R/T 150. 2 décembre 1972. ATP n° 2639 (extraits), p. 1-16
Annexe R/T 151. 4 décembre 1972. ATP n° 2640 (extraits), p. 1-14
Annexe R/T 152. 5 décembre 1972. ATP n° 2641 (extraits), p. 2-5
Annexe R/T 153. 6 décembre 1972. ATP n° 2642 (extraits), p. 12-24
Annexe R/T 154. 19 décembre 1972. ATP n° 2653 (extraits), p. 1-5
Annexe R/T 155. 20 décembre 1972. ATP n° 2654 (extraits), rubrique « Dernière heure »
Annexe R/T 156. 21 décembre 1972. ATP n° 2655 (extraits), p. 1 et 1*ter*
Annexe R/T 157. 22 décembre 1972. ATP n° 2656 (extraits), p. 1-3
Annexe R/T 158. 23 décembre 1972. Communiqué conjoint Tchad/Libye
Annexe R/T 159. 23-25 décembre 1972. ATP n° 2657 (extraits), p. 1-3
Annexe R/T 160. 26 décembre 1972. ATP n° 2658 (extraits), p. 1-7
Annexe R/T 161. 27 décembre 1972. ATP n° 2659 (extraits), p. 1-3
Annexe R/T 162. 17 décembre 1974. Décret portant ratification de protocoles d'accords passés avec la République arabe libyenne. 23 mars 1974. Protocoles d'accords signés à Tripoli entre le Gouvernement de la République du Tchad et le Gouvernement de la République arabe libyenne
Annexe R/T 163. 11 août 1977. Rapport de la réunion du Comité de médiation Tchad/Libye tenue à Libreville, Gabon du 10 au 12 août 1977
**Annexe R/T 164.* 1980. Rossi, C., *L'Africa italiana verso l'indipendenzia (1941-1949)*, Milan, (extraits), p. 234 801
**Annexe R/T 165.* 19 février 1981. Lettre en date du 18 février 1981 du chargé d'affaires par intérim de la mission permanente de la Sierra Léone aux Nations Unies adressée au président du Conseil de Sécurité (S/14378) 803

Page

*Annexe R/T 166. 20 février 1981. Lettre du chargé d'affaires par intérim de la mission permanente du Tchad aux Nations Unies adressée au Secrétaire général (S/14380) 807

Annexe R/T 167. 27 avril 1981. Accord de prêt entre la République du Tchad et la Jamahiriya arabe libyenne populaire et socialiste

*Annexe R/T 168. 25-28 mai 1988. Rapport du Comité *ad hoc* de l'OUA sur le différend frontalier Tchad/Libye (AHG/150 (XXIV)) 809

*Annexe R/T 169. 1er juillet 1989. Fiche adressée à M. le président de la République et relative au retour des personnes déplacées du BET . . . 814

*Annexe R/T 170. 15 septembre 1989. Rapport provisoire de rapatriement des personnes déplacées du BET 818

*Annexe R/T 171. 1989. Fonds de contrepartie des ventes de riz. Plan de conception de sous-activité. Rapatriement de population du BET, deuxième phase 821

Annexe R/T 172. 10 juillet 1990. Rapport de S. Exc. El Hadj Omar Bongo, président de la République gabonaise, président du Comité *ad hoc* de l'OUA sur le différend frontalier Tchad/Libye

*Annexe R/T 173. 26 août 1991. Annexe au mémoire libyen "Exhibit 73" . 830

Annexe R/T 174. Projet de rapport fait au nom de la Commission des affaires étrangères sur l'accord signé à Paris le 12 septembre 1919 entre la France et l'Italie par M. André Fribourg, député (extraits)

Annexe R/T 175. Fonds de contrepartie des ventes de riz. Plan de conception de sous-activité

Annexe R/T 176. Retour des populations déplacées du BET et venant de Libye dans les sous-préfectures du Borkou, de l'Ennedi et du Tibesti

*Annexes R/T 177. Cartes 835

INTERNATIONAL COURT OF JUSTICE

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

REPLY

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S
LIBYAN ARAB JAMAHIRIYA

VOLUME 1

14 SEPTEMBER 1992

MAP INDEX

Map Number		Appearing at Para.
LR 1	Comparison between: Libya's claim 1911 Vilayet of Tripoli proposal 1929 Italian claim	1.29
LR 2	Comparison between: U.N. Map No. 241 1955 Libya Petroleum Regulation Map No. 1	4.25
LR 3	Territorial coverage of the 1955 Treaty	5.21
LR 4	Libya-Algeria boundary rectification, 1956	5.26
LR 5	Various boundary scenarios between Point 1010 and Toummo	5.49
LR 6A	The 1955 Convention "Régime frontalier"	5.53
LR 6B	The 1966 Libya-Chad Accord "Régime frontalier"	5.72
LR 7	Mourie Idie - Piste No.5	5.55
LR 8	Comparison between: Libyan National Atlas, 1978 1955 Libya Petroleum Regulation Map No. 1	5.58
LR 9	Negotiations preceding the 1899 Anglo-French Declaration	6.15
LR 10A	French Army Map:1896	6.18
LR 10B	Justus Perthes Map: 1892	6.18
LR 11	Geographical setting of the 1900 Franco-Italian Accord	6.46
LR 12A	"Extract" of the *Livre jaune* map appearing at *CM*, page 162	6.54
LR 12B	Reproduction of the *Livre jaune* map (fold-out)	6.54

LR 13 Justus Perthes map, 1892, showing: ... 6.55
Tripolitanian notional boundary ... 6.160
Strict southeast line, Article 3, 1899 Declaration

LR 14 Pre-1919 gap between the 1910 Franco-Ottoman Treaty boundary and the 1899 Anglo-French Declaration east-southeast line ... 6.100

LR 15A Map annexed to A.E.F. *Annuaire* of 1912 ... 6.110

LR 15A-1 Same (with explanatory legend) ... Supp. Annex No. 2 Para. 8

LR 15B 1912 French Ministry of Colonies map ... 6.110

LR 16 A-1 1906 Italian Ministry of Foreign Affairs map ... 6.112

LR 16 A-2 Detail of 1906 map ... 6.112

LR 16B 1912 Italian Ministry of Foreign Affairs map ... 6.112

LR 16C 1917 Italian Ministry of Colonies map ... 6.112

LR 16D 1941 Italian Ministry of Foreign Affairs map ... 6.118

LR 16E 1930 Italian school atlas map ... 6.202
... Supp. Annex No. 5.10

LR 17 Ottoman occupation of the Libya-Chad borderlands: 1908-1913 ... 6.121

LR 18 Comparison between: ... 6.121
1890 Ottoman claim
1911 Recommendation of the Vilayet by Tripoli

LR 19 The Anglo-French Convention of 8 September 1919 ... 6.135

LR 20A Territory encompassed by a strict southeast line and 1919 Anglo-French line ... 6.141

LR 20B Territory encompassed by a strict southeast line and the *Livre jaune* line ... 6.141

LR 20C Territory encompassed by the *Livre jaune* line and the 1919 Anglo-French line ... 6.141

LR 21 Reproduction of the *Livre jaune* map (reduced) ... 6.151

LR 13 Justus Perthes map, 1892, showing Tripolitanian notional boundary Strict southeast line, Article 3, 1899 Declaration 6.160

LR 22 Comparison: French Military Presence: 6.190
1914, 1917-1929; 8.05
Strict southeast line;
1919 Anglo-French Convention line

LR 23 French military battles in the Libya-Chad borderlands: 1914-1927 .... 6.190

LR 24 Sarra Triangle 6.193

LR 25 Franco-Italian negotiations following the 1919 Declaration 6.197

LR 16E 1930 Italian school atlas map 6.202

LR 26 Frontiers of Libya: 1948 boundary proposals of Egypt and France 6.251

LR 27A French Boundary Proposal: 1953 .... 6.251

LR 27B French Boundary Proposal: 1954 .... 6.251

LR 27C French Boundary Proposal: 1955 .... 6.251

LR 28 (LR 22) Progression de l'Occupation Francaise - 1900-1914 (C-CM, p. 254): contrasted with the facts and the true picture (LR 22) 8.05

LR 29 Ottoman Presence in the Libya-Chad Borderlands 1908-1912 .... 9.12

LR 30 "Zone à Surveiller" implemented by the French military: 1930 .... 9.32

LR 31 U.N. Map No. 241 .... 10.15

LR 32 Libya's Claim .... Before Submissions

LR 33 1987 O.A.U. Map .... Supp. Annex No. 2; para. 6

LR 34 Map No. 41 from Chad's Map Atlas .... Supp. Annex No. 2; para. 15

LR 35 Map No. 43 from Chad's Map Atlas .... Supp. Annex No. 2; para. 15

LR 36 Comparison: Maps Nos. 33, 68 and 98 from Chad's Map Atlas .... Supp. Annex No. 2; para. 23

LR 37 World Bank Map 1960 .... Supp. Annex No. 2; para. 32

LR 38 World Bank Map 1960 .... Supp. Annex No. 2; para. 32
LR 39 Oil Company Map .... Supp. Annex No. 2; para. 32
LR 40 Oil Company Map .... Supp. Annex No. 2; para. 32
LR 41 Oil Company Map .... Supp. Annex No. 2; para. 32
LR 42 1926 Italian Map with strict southeast line .... Supp. Annex No. 5.5
LR 43 The General Setting .... Supp. Annex No. 7
LR 44 Map with French boundary proposals of 1946, 1953 .... Supp. Annex No. 6.3(1)

PART I

INTRODUCTION

1.01 This Reply is filed by Libya in accordance with the Court's Order of 14 April 1992 fixing 14 September 1992 as the time-limit for the submission of Replies by the Parties[1]. Libya's Reply is submitted in four volumes: Volume 1 - the text of the Reply (Parts I-IV) and Libya's Submissions; Volume 2 - Supplementary Annexes; Volume 3, Parts A and B - Exhibits.

CHAPTER I. THE ESSENTIALS OF THE LIBYAN CASE AND THE DISTORTIONS OF THAT CASE IN CHAD'S COUNTER-MEMORIAL

SECTION 1. The Essentials of the Libyan Case

1.02 The proposition which is fundamental to Libya's case is that there is not, and never has been, an established conventional boundary in the borderlands between Libya and Chad. It follows from this that the Court is required by the Accord-Cadre to resolve the "territorial dispute" referred to the Court as, in the first place, an issue of title to the territory. It is a classic illustration of the "attribution" of territory between two rival claimants on the basis of which claimant establishes the better claim of title. The determination of a precise line of delimitation, dividing the areas over which the two Parties have the better claim, is essentially a second phase of the judicial task. But neither the task of "attribution" nor that of "delimitation" is outside the proper scope of the judicial function.

1.03 It is equally fundamental to Libya's case that it does not invoke any "new" legal theories or principles , but relies on principles and criteria - whether relating to attribution or to delimitation - which are well-established in the law. Thus, there is nothing novel in Libya's reliance on pre-existing legal titles to the territory. Insofar as Libya is the successor-in-title, such reliance is entirely normal. There is nothing novel or extraordinary in Libya's detailed and rigorous analysis of the complex treaty history affecting Libyan territory, for only by such means can the fallacies of the Chadian thesis be exposed. And, insofar as Libya demonstrates that the borderlands were not terra nullius when invaded by French military forces, that demonstration is based upon the Court's own Opinion in the Western Sahara Case[2], and involves only such deductions from the principles of that case as are logically inherent in the Opinion.

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[1] Terms such as "Libya" and "Chad" as defined in Libya's Memorial will continue to be used in the same sense in the present pleading. References to the Memorial and Counter-Memorial of Libya and of Chad will often be made by the use of the acronyms LM, LC-M, CM and CC-M, respectively. Abbreviated references will often be made to international agreements and lines produced by them. For example, the "1935 line" refers to the boundary agreed between Italy and France in the 1935 Treaty of Rome (the "1935 Treaty"), ratifications of which were not exchanged. See, Supplementary Annex, No.1, hereto, for an explanation of other similar abbreviated references.

1.04 Nothing in Libya's case invites States generally, whether in Africa or elsewhere, to challenge established boundaries. By the accidents of history, Libya has been left with an undefined, undelimited boundary which requires determination by judicial means. The Court has assumed such a task in other cases - in the Burkina Faso/Mali Case[3], and more recently in the El Salvador/Honduras Case[4], for example - and it is unacceptable to treat an application to this Court to determine an unresolved boundary as if it were an invitation to world-wide anarchy.

1.05 Libya has succeeded to certain established boundaries in the west and the east and, whilst the circumstances leading to their establishment may be a matter of regret, Libya fully accepts that, to the extent these boundaries have been established, they must be respected. But Libya's "boundary" in the south is a very different matter. There is no doubt that, as a matter of indisputable historical record, the borderlands were held and inhabited by tribes closely linked to what is now Libya, were claimed by the Ottoman Empire, but were gradually and systematically invaded by the French. That invasion was strenuously resisted by the indigenous peoples, organised and led by the Senoussi. Ultimately, however, that resistance was ruthlessly suppressed by France in a campaign of undisguised, colonial expansion.

1.06 Certainly it is true that France sought international recognition for its expansionist aims. By a series of agreements with Great Britain and Italy, as will presently be shown, France sought agreement as to the precise limits of the territory it intended to acquire by conquest. The agreement sought was from States also engaged in colonial conquest and expansion. But in fact, that agreement was never reached between France and other States capable of agreeing on a boundary in the borderlands. Italy alone had that capacity after the 1912 Treaty of Ouchy, holding sovereignty between 1912 and 1947, but its 1935 treaty with France was never implemented.

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[2] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

[3] Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554.

[4] Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Arbitral Award of 31 July 1989, Provisional Measures, Order of 2 March 1990, I.C.J. Reports 1990, p. 64.

1.07 Libya thus faces a claim by Chad in which Chad essentially relies on French claims based upon military conquest of the tribal peoples of the borderlands, and, moreover, conquest at a time when France had solemnly renounced the right to acquire territory by conquest.

1.08 Not surprisingly, Chad is reticent about placing its claim on so defective, and unattractive, a basis. Thus, Chad presents before the Court a somewhat abstract claim of title, as deriving from this series of international agreements in which France attempted to secure recognition of its expansionist aims. The treaty history is somewhat complex but it can be summarised as follows.

1.09 For practical purposes, one can begin with the year 1890 when the Ottoman Empire first articulated its Tripolitanian hinterland claim, which was neither accepted, nor specifically rejected, by Britain and France. The Anglo-French Additional Declaration of 1899 is the next big "international act". At that time, French military forces had not yet reached Lake Chad. There was no British civil or military presence in territories immediately to the north or east of the famous southeast line described in Article 3 of the Declaration. From the British point of view, the Declaration did not truly divide "spheres of influence" between Britain and France and did not affect the territorial claims or prospective claims of other Powers. It merely posited a line to the north and east of which France would not seek to extend its pretensions. This was the explanation given at the time, or shortly thereafter, to the Ottoman and Italian representatives.

1.10 The Franco-Italian Accords of 1900 and 1902 were not concerned at all with the southeast line described in Article 3 of the Declaration. They were primarily directed towards reassuring Italy (as the European Power hoping to succeed in due course to the rights and titles of the Ottoman Empire in and in relation to Tripolitania) that France's territorial ambitions in North Africa, where it was at the time in possession of Tunisia and Algeria, did not extend to an encroachment from the west on the territory of Tripolitania as it was then generally understood to be.

1.11 The Anglo-French Convention of 8 September 1919 is not directly relevant to the determination of Libya's southern boundary east of Toummo. That Convention may have established, as between Britain and France, and subject to further delimitation in the area between 11° and 15°N, a north-south boundary dividing what the parties considered to be French or British territories on its east and west up to a point at 19°30'N latitude. But that point was not opposable to Italy which protested strongly against the 1919 Convention on the grounds that its purported effect was to deprive Italy of territories to which it was legally entitled on the grounds of Italy's succession to Ottoman rights and titles. The prolonged negotiations between France and Italy between 1920 and 1934 testify to the absence of any agreed southern boundary of Libya at that time.

1.12 The Treaty of Rome of 1935 for the first time established such an agreed boundary, but, for reasons unconnected with that boundary, it failed to enter into force.

1.13 U.N. General Assembly Resolution 392(V) acknowledged that there was a portion of Libya's boundaries with French territories which had not been delimited by previous international agreements; the circumstances surrounding the adoption of that Resolution clearly demonstrate that that portion was Libya's southern boundary with French territories east of Toummo. Article 3 of the Franco-Libyan Treaty of 1955 did not, directly or indirectly, establish Libya's southern boundary with French territories east of Toummo for reasons made abundantly clear in Libya's previous written pleadings. These reasons will again be set out in Part II of this Reply.

1.14 These are the bare bones of Libya's contention that there is not now, and never has been, any conventional boundary separating the territories of Libya and Chad. This contention is amply sustained and evidenced by the voluminous materials which Libya has presented to the Court, including materials that demonstrate that France itself recognised in 1935, in a most formal fashion, the absence of any conventional boundary with Italy (then exercising sovereignty over Libya) east of Toummo.

1.15 As France has never acquired title on the basis of treaty law, other modes of acquisition of title necessarily must come into play. In the view of Chad, France has indeed established a title on the basis of conquest and occupation. Turning, first, to occupation, these French and Chadian arguments must be wrong because they assume that the borderlands were terra nullius. However, they were not, as the Western Sahara Opinion of the Court clearly shows. For the Senoussi peoples were organised in a political, military, economic and cultural manner which, according to this Opinion, excludes acquisition of title on the basis of occupation. Presumably aware of this situation, Chad additionally seems to rely on title by conquest. However, by the time French forces moved in any strength into the borderlands, conquest had become illegal on the basis of the Covenant of the League of Nations in 1919 and the Kellogg-Briand Pact in 1928. Moreover, military occupation in itself will not satisfy the requirements for acquisition of title, and this is conceded explicitly by Chad. And France never established a civilian organisation in the borderlands. In consequence, the modes of acquisition discussed and claimed by Chad will not lead to a title to which Chad could succeed.

1.16 Thus, in the absence of a conventional boundary, and of any title based on occupation or conquest, the Court will be forced to rely on other rules to govern both attribution and delimitation. These are the accepted rules of attribution of territory which serve to delimit the territories of sovereign States. It is regrettable that Chad, in all her pleadings, has entirely failed to assist the Court in the task of identifying and applying these rules. It has rested with Libya in its Counter-Memorial to spell out these rules of attribution, to apply them to the facts of the case and to indicate the frontier which results.

1.17 It is necessary to approach this task in an historical manner, as Courts have done in previous cases, establishing step-by-step the evolution of the factual and legal situation in the borderlands. And the central lesson of history relevant to this case shows that the Senoussi Order had established itself in the region by 1890 and had governed the territory comprising the borderlands under a system of power-sharing with the Ottomans until the end of 1912. The Senoussi peoples defended their territory against the French colonialist forces all along, and they continued to do so in spite of the French military advance into the borderlands after 1913. And when Libya gained independence in 1951, Libya inherited the borderland territory which the Senoussi peoples, together with the Ottoman Empire and Italy, held from the mid-19th Century to 1947-1951. Thus, the Libyan case rests on the recognition that the indigenous peoples, organised and led by the Senoussi, who had fought the colonial Powers for decades, had held title and never lost it. It was the legal rights of the indigenous peoples, coupled with the assertion of sovereignty on the international plane by the Ottoman Empire and Italy successively, and the specific rights which Italy had as against France, which Libya acquired in 1951 upon independence.

1.18 After 1951, this legal situation never changed even though Libya was not in a position to assert her territorial rights by military means. Nor did Libya acquiesce, at any point after 1951, in claims by France or Chad which were incompatible with the territorial rights inherited by Libya. The internal strife within Chad after independence in 1961 precluded any settlement of the boundary issue until, in 1989, the Parties agreed to submit their dispute to the Court.

1.19 The Court has, in Libya's submission, the necessary facts and evidence to determine both title and a precise boundary. On the basis of the maps and documentary evidence provided in the Libyan pleadings, it is possible to identify the limits of Ottoman occupation as well as of legally effective French penetration prior to the Covenant of the League outlawing further acquisition of territory. And the location of tribes, their affiliations and links, whether cultural, religious or economic, together with the geography of the terrain, are all matters sufficiently within the knowledge of the Court to permit a boundary to be drawn which will conform to the law and to equity.

1.20 This, then, is the essence of Libya's case. It is immediately apparent that the portrayal of Libya's case in Chad's Counter-Memorial defies recognition. In the Section that follows the major distortions of Libya's case are identified.

SECTION 2. The Distortions of Libya's Case in Chad's Counter-Memorial

1.21 At a stage in the written pleadings when the Parties are expected to identify the essential issues that divide them, so as to assist the Court, it is to be regretted that Chad has sought to distort and misrepresent Libya's arguments. Whether done by way of a series of wild accusations against Libya, or by way of a re-formulation of Libya's arguments so that they become a travesty of what Libya has actually said, the result is the same: the issues before the Court -

which need to be clarified and identified - become increasingly blurred and obscured by rhetoric.

1.22 Thus Libya is accused of seeking to promote anarchy. Why else should Chad's Counter-Memorial begin by comparisons with Iraq's invasion of Kuwait, and with the confused situation in Yugoslavia and the Soviet Union[5]? What other purpose is served by the repeated accusation that the Libyan claims will have a politically-destabilising effect in Africa as a whole[6]? How can the continued accusation that Libya does not respect its treaty obligations assist[7]?

1.23 It is a fact of international life that boundary disputes and unsettled frontiers do exist, not only in Africa but elsewhere in the world. Whatever the causes may be, they are not of Libya's creation, and it is little short of absurd to cite this fact of international life as "proof" of Libya's intention to promote international anarchy. Indeed, given that Libya has voluntarily submitted this dispute for settlement by the International Court, it is an extraordinary concept of anarchy that would view such a submission of a dispute, for settlement by law, as promoting "anarchy".

1.24 There is a portrayal of Libya as "revisionist", as a State seeking to revise the existing boundary and promote the "secession" of northern Chad[8]. But, clearly, this merely begs the question. Chad simply assumes that the frontier is fixed by treaty, and thus characterises Libya's aim as seeking to revise the relevant treaties. Yet this is not Libya's argument. It should be apparent to even the most casual reader of Libya's Memorial that Libya denies that this frontier has ever been established by treaty. And, far from being a novel thesis, surprising Chad, it is a thesis which emerges with absolute clarity from the diplomatic record. The Ottoman Empire protested the Anglo-French pretensions over what the Porte regarded as its hinterland from the 1890's[9], and specifically rejected any claim that the line established in the 1899 Anglo-French Declaration was a boundary[10]. Italy, in turn, rejected the 1919 Anglo-French Convention line as a boundary[11], and claimed territory roughly equal in overall extent to the present Libyan claim. Thus, if there is any "novelty" about the present Libyan claim it can only be so regarded by someone who has totally ignored the whole diplomatic record. So either the claim of "novelty" betrays a quite exceptional degree of incompetence, or it is in fact a quite specious claim.

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[5] See, CC-M, para. 1.01.

[6] See, CC-M, paras. 1.08 and 12.20.

[7] See, CC-M, paras. 3.23-3.25, where Chad suggests that Libya seeks to invalidate the boundary treaties of 1899, 1919 and 1955 retroactively by invoking jus cogens. This is a travesty of Libya's argument. Libya's argument does not go to the validity of those treaties; its point is simply that those treaties did not establish a boundary opposable to Libya.

[8] See, especially, CC-M, paras. 4.20-4.21 and the comparison with Ruanda-Urundi. See, also, CC-M, paras. 12.08, 12.16 and 12.19.

1.25 In much the same vein Libya is portrayed as "expansionist", as a State with "un appétit territorial féroce"[12]. But the historical record shows unmistakably who the expansionist Power was: it was, without question, France, and in effect Chad now seeks to derive full benefit from the voracious appetite of that Colonial Power. So far as Libya is concerned, the territory it claims is Libyan, and Libya has at no stage transgressed an established international frontier or occupied "foreign" territory. The Tombalbaye letter of 1972[13] recognised the so-called "Aouzou Strip" as being Libyan territory - and hence the lack of protest by Chad when Libya established its administration there shortly thereafter. Even the later involvement of Libyan forces in the internal conflict in Chad was at the specific request of the Government of Chad[14].

1.26 An accusation of a different kind, but nevertheless untrue, is that Libya belittles Chad, portraying it as an artificial creation by a Colonial Power[15]. Libya in its Memorial had merely cited a respected authority who had commented on the very special circumstances under which Chad achieved its independence[16]. That being said, it is a matter of record that, on independence,

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[9] See, LM, paras. 5.49-5.55.

[10] See, especially, the dispatch of 19 May 1899, LM, French Archives Annex, p. 61.

[11] See, LM, paras. 5.188-5.191.

[12] CC-M, para. 1.03.

[13] See, LC-M, paras. 5.119-5.120.

[14] Libyan forces were promptly withdrawn when so requested, although Libyan governmental authority remained in the northern borderlands where it was lawfully present.

[15] See, CC-M, para. 1.09.

[16] See, LM, para. 5.532.

Libya welcomed Chad into membership of the United Nations, concluded treaties with Chad on a basis of full equality, and extended aid and assistance to Chad on a scale matched only by France. So it is not that Libya seeks to "belittle" Chad but rather, on a basis of sovereign equality, Libya seeks to resolve a genuine dispute over title to territory. Libya does not see itself as "dominant" in this relationship. Even accepting the present disparity in wealth, Libya is very conscious that its oil reserves will not last forever, and that the day may come when Chad - with its larger population and broader economic base - sees itself as the more "dominant"[17].

1.27 There is, finally, the rather serious accusation[18] that Libya argues a case based on facts rather than law, a case politically motivated and entirely "strategic" - by which it is implied that Libya makes large claims simply hoping the Court will have to give it something.

1.28 Libya makes no apology for its attempt in both its Memorial and Counter-Memorial to set out the facts, carefully and thoroughly. It will by now be evident to the Court that the facts are complex, but of the highest importance. Chad may well have an interest in glossing over the facts, for it is the facts which give the lie to so many of the propositions at the heart of Chad's case. To give but a few examples: the proposition that the 1899 line and the 1919 line are the same; the proposition that France had completed effective occupation of the entire borderlands by 1919 (or even by 1914, as the CC-M appears to contend); the proposition that the borderlands were terra nullius; the proposition that the southern boundary of Libya was clear to the United Nations in 1950-1951; the proposition that in the 1955 Treaty the Libyan side accepted that the southern frontier of Libya had been previously delimited by treaty - all these are propositions that can be shown to be false on the facts. There seems little point in engaging in lengthy, and somewhat abstract, expositions of legal principle when what is needed is a close analysis of the facts to see whether such legal principles have any relevance.

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[17] This is not to give credence to the suggestion by Chad (at CC-M, para. 1.36) that Libya sees itself threatened by Chad. However, the possibility that other Powers might pose a threat to Libya from Chadian territory cannot be excluded, so that Libya must remain concerned about the defensibility of its southern frontier.

[18] See, CC-M, paras. 1.19 and 2.06.

1.29 As to the suggestion that Libya makes a "strategic", or "opportunistic" claim, asking for much in the hope that the Court will award it just a little[19], it need only be stated that the Ottoman Empire and Italy were fully prepared to negotiate with France on the basis of claims of roughly comparable territorial extent, as Map LR 1 illustrates[20]. Neither the Ottoman Empire nor Italy contemplated claims before this or any Court. They had no "judicial strategy" of any kind. The claims they advanced were regarded as bona fide claims, based on the best available evidence, as are Libya's present claims. Chad's suggestion that these are novel, opportunistic claims concocted with the Court in mind suggests that Chad simply has not read, or else wishes to forget, the historical record.

* * *

1.30 Libya would have liked to have kept this Reply down to one, relatively short, volume, but circumstances have made this impossible. First, as mentioned in paragraphs 5.99-5.102 below, Libya has only recently been granted access to certain French archives containing important documents bearing on the case. These documents are placed in evidence in Volume 3 as Exhibits to this Reply. This new evidence has, in turn, made it necessary to supplement the documents already provided from other files. Second, Chad's Counter-Memorial contains a large number of assertions that are incorrect and require rebuttal. This has made it necessary to present certain additional evidence.

1.31 In order to assist the Court in its examination of this new evidence as well as to understand why some of Chad's assertions are so totally wrong in certain instances, Libya has prepared eleven Supplementary Annexes, which comprise Volume 2. References in the text of the Reply to this documentary evidence will, in the first instance, be to Volume 2, where the

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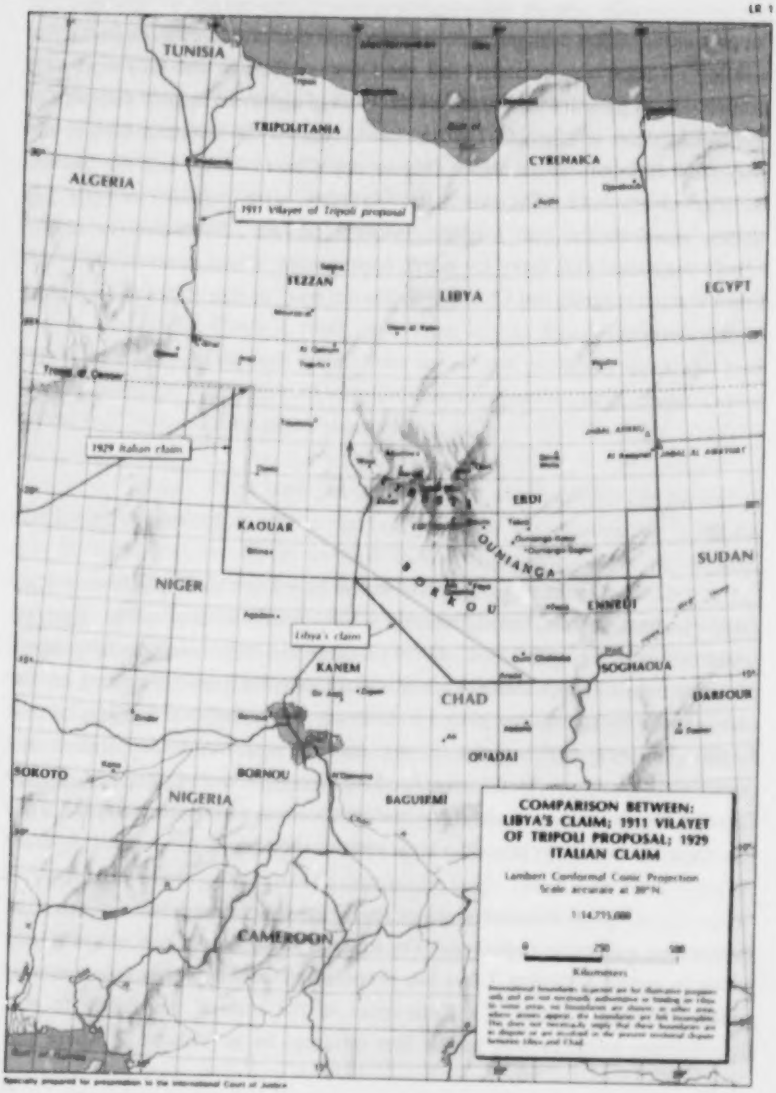
[19] See, CC-M, para. 12.25.

[20] See, also, the maps illustrating the successive Turkish and Italian claims and proposals reproduced in the LM: Map Nos. 52/B, 54-57 and 68-73.

LR 1


TUNISIA
TRIPOLITANIA
ALGERIA
CYRENAICA
1911 Vilayet of Tripoli proposal
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
1929 Italian claim
ERDI
KAOUAR
OUNIANGA
SUDAN
NIGER
BORKOU
ENNEDI
Libya's claim
KANEM
SOGHAOUA
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
COMPARISON BETWEEN: LIBYA'S CLAIM; 1911 VILAYET OF TRIPOLI PROPOSAL; 1929 ITALIAN CLAIM
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,775,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice

meaning and relevance of the evidence is summarized. Then, in Volume 3, the new evidence itself may be found and examined in detail.

1.32 To take an example, Supplementary Annex, No 6 is divided into 10 sub-annexes (6.1-6.10) in which particular documents or groups of documents are commented on. The evidence itself appears in Volume 3, LR Exhibit 6, under the same sub-annex numbers as in the Supplementary Annex, that is, LR Exhibits 6.1-6.10. If within a sub-annex there are several documents, the particular document being referred to is set forth in parenthesis: Supplementary Annex, No. 6.4(6) or 6.4 (Document 6).

1.33 In some cases, where documents have heretofore been placed in evidence by either Libya or Chad, the documents themselves have been appended to the Volume 2 commentary rather than placed in Volume 3, so as to make it easier to examine the evidence directly in weighing the respective merits of the differing positions of the Parties.

1.34 Finally, since there are so many assertions in Chad's pleadings with which Libya takes issue, it has not been possible to deal with each and every one of them. As a result, Libya informs the Court that its failure to address an argument or an assertion concerning a question of fact or law does not imply Libya's agreement or acceptance thereof; such arguments or assertions not addressed must be deemed to have been denied by Libya.

CHAPTER II. THE ISSUES THAT CONTINUE TO DIVIDE THE PARTIES

2.01 The Counter-Memorials of the Parties reveal only a very marginal area of agreement: this includes the propositions that, in this case, the critical date is 24 December 1951 (the date of Libya's independence); that the 1955 Treaty would be expected to be the starting-point for the Court's task, since it either did (Chad's view) or did not (Libya's view) establish the boundary; and that a valid title to territory cannot be acquired by force.

2.02 Beyond this, however, the Parties remain fundamentally at odds; and in this Reply, Libya has tried to concentrate on the essential points of difference. It may assist the Court to have these essential questions listed with references to where, in this Reply[1], these points have been addressed.

2.03 First, does the Court's compétence extend to deciding on a delimitation which involves attribution of territory, based on evidence as to which of the Parties has the better claim to title; or is it limited to delimitation in the narrow sense of deciding between the 1899-1919 "line" and the 1935 line? (Chapter III of this Reply).

2.04 Second, did the 1955 Treaty establish a boundary directly (in the sense that it identified and established a line) and was constitutive of the boundary, or indirectly (i.e., by reference to international acts which established the line) and hence was only declaratory of whatever boundary existed on the critical date? Chad argues both possibilities, whilst Libya rejects both. (Chapters IV, V and VI of this Reply).

2.05 Third, in the event that no treaty delimitation of the boundary can be established, which Party has the better claim of title? Is it:

- Chad, based on succession to France, by virtue of:
    - Occupation of the territory as terra nullius? (Chapter VII on the nature of the territory; and Chapter VIII on the evidence of French "occupation".)

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[1] The relevant sections of the Reply contain further references to the earlier pleadings.

or:

- Conquest by France? (Chapter VIII, Section 3.)

Or is it:

- Libya, based on succession to titles asserted by the indigenous peoples of the borderlands, the Ottoman Empire, and Italy?

As to: (i) the indigenous peoples, see Chapter VII, Sections 2, 3 and 4; (ii) the Ottoman Empire, see Chapter VII, Sections 5 and 6; (iii) Italy, see Chapter VII, Section 7.)

2.06 Fourth, does the conduct of the interested parties, pre-1945, disclose evidence of either an established frontier based on treaties or claims of title incompatible with an established frontier but made by parties to which Libya or Chad are successors- in-title?
(Chapter IX.)

2.07 Fifth, does the conduct of interested parties (other than Libya and Chad) in the period 1945-1951 disclose any such evidence?
(Chapter X.)

2.08 Sixth, does the conduct of the Parties themselves, Libya and Chad, disclose any such evidence?
(Chapter XI.)

CHAPTER III. THE TASK OF THE COURT

3.01 Before embarking on a detailed discussion of the task of the Court, it will help to start with a summary. In a number of passages, the CC-M asserts that Libya's claim exceeds the limits of the Court's compétence under the Accord-Cadre. Yet, despite these contentions, in reality, Chad does not raise a preliminary objection to the Court's compétence. In any event, Chad's assertions have no foundation in the provisions of the Accord-Cadre, which grant the Court the full extent and range of compétence required to consider the merits of the claims of the Parties in all their aspects and ramifications. Furthermore, in its written pleadings, Chad has explicitly asked the Court to reject the substance of Libya's claim, necessarily implying the recognition at the same time of the Court's compétence in regard to the merits of Libya's claim. So at the end of the day, it must be concluded that this is not an issue dividing the Parties.

3.02 In this final stage of the written pleadings, it would not be useful to take up again and develop further each Party's thesis as to the Court's task in this dispute. It is more appropriate, instead, to bring out the main points of each in order to help the Court to identify the questions as to its compétence on which agreement exists between the Parties, either from the start of these proceedings, or during the course of them, and, thus, where there is no difficulty. In this way, the Court can determine more easily what the real issues are on which to concentrate its attention.

3.03 If the written pleadings of the Parties concerning the Court's mission are compared, it is quickly perceived that, at least at first glance, they analyse in a very different way three central themes:

- The extent and scope (ratione materiae) of the Court's compétence;

- The identification of the powers of the Court; and

- The principles and rules to apply in order to resolve the dispute.

3.04 Regarding the first, Chad's point of departure is that the Accord-Cadre of 1989 identifies in a restricted fashion the dispute which the Court is competent to resolve: that it concerns a dispute exclusively over a boundary, in which the sole question to be answered is whether the boundary line separating Libya from Chad lies along the northern edge or along the southern edge of the so-called "Aouzou Strip". As a result, Chad contends that the Court has not been, and could not be, seized with the task of resolving a "territorial" dispute concerning the attribution of territory to one or the other Party. Libya, on the other hand, considers that the *compétence* of the Court is subject to no limitation of this kind.

3.05 Regarding the *second* theme, Chad contends that the sole task conferred on the Court is precisely to decide which of two possible boundary lines is the line binding in law: the 1899-1919 line or the 1935 line? In contrast, Libya considers (i) that nothing stands in the way of the Court deciding that no conventional boundary has ever been fixed in the region, (ii) that therefore the boundary is to be determined now for the first time by the Court itself in the light of international law, taking into consideration the respective legal titles of the Parties over the territory in dispute, and (iii) that it cannot be ruled out *a priori* that the ultimate boundary *may not* correspond to either of the lines posed by Chad as alternatives for the Court to choose between.

3.06 As to the *third* theme, Chad contends that the Court can discharge this task essentially by applying pertinent international treaties and, in particular, by not allowing equitable principles to play any role at all. In contrast, Libya considers that, although a number of international agreements may prove useful to the Court, none alone or in combination decides the question. Accordingly, the *Accord-Cadre* does not in any way limit recourse to other sources of international law; and whatever sources of law are relied on, whether conventional or otherwise, equity will have an important role to play within the jurisdictional framework of the resolution of the dispute *secundum jus*.

3.07 Notwithstanding the differing points of view of the Parties on these three themes, the Parties are in agreement that the reconciliation of these differences must be drawn from an interpretation of the *Accord-Cadre* of 31 August 1989, which without any doubt constitutes a *compromis*[1]. Where a *compromis* exists it constitutes "la base même de la compétence de la Cour[2]", for

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[1] *See*, the Court's Order of 26 October 1990, settling this point.

[2] Guyomar, G.: *Commentaire du règlement de la Cour Internationale de Justice*, Paris, Pedone, 1983, p. 253.

"... celle-ci est déterminée dans les affaires contentieuses par l'étendue du consentement des Parties de se soumettre à la juridiction de la Cour[3]". In other words, unquestionably the principle extra compromissum arbiter nihil facere potest is valid for the Court as well.

3.08 Hence, it is appropriate to begin, once again, by taking a close look at the Accord-Cadre of 1989 in order to determine the extent to which a serious lack of agreement continues to exist between the Parties, after having exchanged Memorials and Counter-Memorials, concerning the scope of the compétence granted to the Court by this compromis. This will be taken up in Section 1. This analysis will then make it possible - in Section 2 - to consider the three themes on which the Parties differ in the light of the pleadings of the Parties.

SECTION 1. **Interpretation of the Compromis: Ordinary Meaning, Context and Travaux Préparatoires**

3.09 As with any international agreement, the Accord-Cadre is to be interpreted in the light of the pertinent criteria and principles. The Parties have expressly agreed that these criteria and principles are those set out in Article 31, et seq., of the 1969 Vienna Convention on the Law of Treaties[4]. Both the jurisprudence and the doctrine are unanimous in the view that these articles are a codification of general international law concerning the interpretation of treaties. They are entirely appropriate for application here even though neither Libya nor Chad has ratified the Vienna Convention.

3.10 The ordinary meaning of the Accord-Cadre will be taken up first (para. (a)), analysed within the framework of its context (paras. (b) and (c)). As for the travaux préparatoires of the compromis and "the circumstances of its conclusion" (Article 32 of the Convention), these certainly must be considered, bearing in mind that their role is only that of "supplementary means of interpretation" and cannot be used to modify the clear result pointed to by the ordinary meaning of the text in its context (para. (d)).

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[3] Abi-Saab, G.: Les exceptions préliminaires dans la procédure de la Cour internationale, Paris, Pedone, 1967.

[4] See, U.N. Doc. A/CONF. 39/27, adopted 22 May 1969; reprinted in, Int'l Leg. Mat., Vol. VIII, 1969, p. 679, at p. 691.

(a) The Ordinary Meaning of the Accord-Cadre

3.11 In their written pleadings, the Parties have set out the elements to consider in order to discern the ordinary meaning of the compromis. To begin with, the words "territorial dispute" appear formally in this instrument's title. Then, after stating in its Preamble the intention of the Parties to "régler pacifiquement leur différend territorial", the Accord-Cadre repeats the terms "différend territorial" two more times (Article 1 and Article 2, first phrase) to indicate at what point the "différend" itself (this time without any adjective) will be submitted to the Court (Article 2(a)): in the event a "réglement politique" would not appear feasible. Further on, in (b) of the same article, the instrument refers to "la région litigieuse", without any geographical definition. Finally, the Parties undertook certain accompanying measures pending the Court's rendering of "un arrêt définitif sur le litige territorial"[5].

3.12 There is no question that the Accord-Cadre omits most of the details identifying with any precision the dispute or what the Parties expect the Court to do. But the essential elements are there: first, that the dispute submitted to the Court is "territorial"; second, that the dispute concerns the ownership of a "région" by one or the other of the Parties; third, that the Parties request the Court to resolve this dispute definitively; and fourth, that the settlement is to be juridical not political in character.

3.13 With regard to the first element, one cannot help but be impressed by the clarity, consistency and clearly expressed purpose that emerges from this text. As just shown, the sole qualifying word used to identify the nature of the dispute is "territorial", and this word - to avoid any misunderstanding - is repeated five times. To support Chad's contention that the Accord-Cadre deals not with a territorial dispute but with a boundary dispute would require proof that the same error was made five times over in the text and even in the official title to this case: "Territorial Dispute (Libyan Arab Jamahiriya/Chad)". In short, Chad must demonstrate here that the "ordinary meaning" of the treaty's terms is to be disregarded, contrary to what is prescribed in Article 31, para. 1, of the Vienna Convention. Such a result cannot be envisaged unless supported by clear and precise evidence establishing, on the basis of an historical and contexual interpretation, that the intention of the Parties was other than that resulting from the ordinary meaning of the text.

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[5] Accord-Cadre, Art. 2(d).

3.14 As for the second element, the fact that the compromis talks of a "région litigieuse" fully confirms the correctness of the preceding analysis: it means that there is a territory that belongs to one or the other Party. In other words, to resolve the territorial dispute, it is evident that the Court must focus on the legal titles establishing the attribution of the "région" in question, whose geographical extent must, of course, be identified.

3.15 With regard to the third element, as reflected in the very title of the compromis, the Parties expect the Court to deal with the dispute so as to arrive at a decision definitively resolving the dispute. This implies that the Court must be seized with the case in all its aspects so as to be able to reach a solution disposing of the case. A definitive decision is clearly not possible if the Court is not considered to have the compétence to allow it to deal with all of the Parties' arguments and allegations in all their aspects. It must be stressed that the Accord-Cadre imposes no restrictions of any kind on the Court in arriving at a solution. Nowhere in the Accord-Cadre is it suggested, as Chad contends, that the Court is limited to a choice between two predetermined solutions. It follows, therefore, that the Court must be able to consider and decide with the fullest compétence how under the principles and rules of international law the dispute should be decided definitively.

3.16 Finally, the fourth element is that, without any doubt, the Court must resolve the territorial dispute secundum jus. This is clearly implied in the Accord-Cadre by the fact that the Parties agreed therein to submit their dispute for decision by the Court "à défaut d'un réglement politique". In any event, no other conclusion could be reached. Under the Statute of the Court, the Court is called on to adjudicate the cases submitted to it in conformity with international law (Article 38, para. 1), unless the parties have agreed to request the Court to decide a case ex aequo et bono (Article 38, para. 2). As the Accord-Cadre contained no mention of a ruling ex aequo et bono, neither Libya nor Chad contends that the Court could resolve the present dispute other than by applying the law.

3.17 In this regard, the Accord-Cadre makes no mention of the law to be applied. This would indicate that the Parties did not want to limit the power of the Court to consider freely the principles and rules of international law applicable to the case. In other words, the compromis lends no support to Chad's thesis that the Court should limit itself, in resolving the dispute, to international treaties. The compromis contains no indication that the Court should only seek to find the applicable law to apply in international instruments as the sole source of law. Such treaties must, of course, be applied; but if they do not settle the question, then other sources of law have to be consulted by the Court. It must not be forgotten that the Accord-Cadre entrusted the Court with the task of definitively resolving the dispute between the Parties; the Court would betray its mission if, in the absence of a solution provided under treaty, the Court should refuse to find a legal solution relying on other sources of law.

(b) The "Context" of the Accord-Cadre and the Importance of the Positions Adopted by the Parties in their Written Pleadings

3.18 The need to have recourse to a "contextual" interpretation of the Accord-Cadre is stressed in the CC-M, where it is stated:

> "(L)'accord-cadre de 1989 n'existe pas dans un vacuum. Il doit être compris dans son contexte historique et diplomatique[6]."

Libya fully shares this point of view: it is true that the Accord-Cadre furnishes few details concerning the task of the Court and, thus, it is indispensable to consider the instrument in the light of its context in order to verify the conclusions reached from an examination of its ordinary meaning[7].

3.19 Libya is astonished, however, that Chad completely mixes together the "context" and the travaux préparatoires. All of Chad's arguments are aimed at arriving at the meaning of the Accord-Cadre through an analysis of the debates before the O.A.U. and the U.N. as well as from certain statements of Libya's representatives - statements that are anything but precise - made in the course of debates or of diplomatic exchanges that occurred before the Accord-Cadre was concluded.

3.20 It must be said straight off that these debates and exchanges - as will be demonstrated shortly - do not have the probative character that Chad would attribute to them. Furthermore, they have only a faint relevance to the interpretation of the Accord-Cadre. They do not concern the negotiations leading up to the Accord-Cadre, and they do not contain reliable information allowing the intention of the Parties to be established at the moment they adopted the Accord-Cadre's text.

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[6] CC-M, para. 2.82.

[7] See, Vienna Convention on the Law of Treaties, op. cit., Art. 31.

3.21 But the essential point is that these elements relied on by Chad have absolutely nothing to do with the "context" of the Accord-Cadre. On the contrary they are part of the "circumstances of (the compromis') conclusion" and, thus, part of the travaux préparatoires, as described in Article 32 of the Vienna Convention. They are simply a "supplementary means of interpretation" for use only to confirm the validity of the interpretation resulting from the criteria stipulated in Article 31 (the ordinary meaning of the treaty) or to determine the meaning if the plain meaning leads to an interpretation that is "ambiguous or obscure" or to a result that is "manifestly absurd or unreasonable" (Article 32).

3.22 The meaning and application of Articles 31 and 32 are so well known that this inter-mixture by Chad of elements of "context" and elements of travaux is perplexing and points up the difficulties Chad must have had in supporting its incorrectly narrow reading of the Accord-Cadre. But setting this aside, one of the privileged elements of interpretation, falling under Article 31(b), concerns any agreements and practices subsequent to a treaty that establish the agreement of the parties as to its interpretation. It is useful, therefore, to consider now how the Parties themselves have interpreted the compromis in papers produced by them. This will show that the Parties have not always been so far apart regarding the Court's compétence and powers under the Accord-Cadre.

3.23 Proceeding in this fashion is especially appropriate when the treaty in question is a compromis. For it is established that -

> "... the jurisdiction of the Court to deal with and to decide a case on the merits depends on the will of the Parties[8]."

As a consequence -

> "... a State may not be compelled to submit its disputes to arbitration without its consent[9]."

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[8] Anglo-Iranian Oil Co., Judgment, I.C.J. Reports 1952, at p. 103.

[9] Ambatielos, Merits, Judgment, I.C.J. Reports 1953, at p. 19.

Moreover, it is clear that "consent may be given ante hoc, ad hoc, or post hoc[10]." In particular, post hoc consent either replaces ante hoc consent and ad hoc consent (giving rise to the phenomenon of forum prorogatum) or supplements them. In other words, even in the event of a compromis (ad hoc consent) it is possible that:

> "... les demandes, les arguments ou les faits invoqués par l'une des Parties dépassent les limites de la compétence établie par le compromis[11]."

According to this hypothesis (which Chad considers to be the situation in the present dispute, and Libya does not), the conduct of a party opponent during judicial proceedings may constitute a type of post hoc consent, placing beyond contest the question of the Court's compétence. This is the result when the interested party neglects to raise an issue as to the Court's compétence or expressly accepts that the Court examine on the merits an alleged exorbitant claim of the opposing party.

(c) Factors Establishing Chad's Recognition of the Court's Compétence to Examine the Merits of Libya's Claim

3.24 Turning now, in the light of the above comments, to the Parties' positions before the Court, an examination of them permits a determination whether, notwithstanding what Chad says now, in its written pleadings Chad did, indeed, accept Libya's interpretation of the Accord-Cadre, thus rendering incontestable the Court's compétence - even if Chad's narrow interpretation of the Accord-Cadre is correct (and Libya's is wrong) that at the outset of the case Libya's claim went beyond the scope of the compromis.

3.25 It will be recalled that the first two documents of the Parties initiating these proceedings before the Court were formulated differently. Libya's Notification, dated 31 August 1990, requested the Court:

> "... to decide upon the limits of their [the Parties'] respective territories in accordance with the rules of international law ...[12]."

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[10] Fitzmaurice, G.: The Law and Procedure of the International Court of Justice, Vol. II, 1986, p. 496.

[11] Abi-Saab, G, op. cit., p. 20.

[12] See, LM, International Accords and Agreements Annex, No. 39.

The request was based on the line of reasoning that while the Court has available to it a series of international instruments to take into consideration in resolving the dispute:

> "... none of those agreements finally fixed the boundary between the Parties which, accordingly, remains to be established in accordance with the applicable principles of international law[13]."

3.26 Chad, on the other hand, in its Application filed on 3 September 1990, asked the Court to "déterminer le tracé de la frontière" between the Parties, and in so doing to adjudge and declare that the boundary line had been fixed and defined by a series of Anglo-French and Franco-Italian international agreements binding on Libya and Chad, as confirmed by the 1955 Treaty. Therefore, it was evident from the start of the proceedings that a major difference existed between the positions of the Parties concerning the very essence of the dispute.

3.27 It is clear that when Chad presented its Application to the Registrar, Chad was unaware of the precise request set out in Libya's Notification formally presented on that day. Chad may be presumed to have been unaware, in particular, that Libya's request was based on a thesis that no international agreement had ever definitively fixed this boundary and that, as a consequence, the boundary was to be determined hic et nunc by the Court under international law. However, Chad was no longer unaware of Libya's request on 28 September 1990, when Chad's Agent sent the Court a letter acknowledging (i) that the two introductory documents concerned the same dispute and (ii) that the Court's compétence to resolve the dispute was granted by the Accord-Cadre, which constituted a compromis. In this same letter, Chad's Agent added:

> "... quoique la République du Tchad reconnaisse sans restriction la compétence de la Cour pour trancher le réglement territorial qui lui a été soumis par les Parties, mon gouvernement conteste formellement l'affirmation de la Jamahiriya arabe libyenne selon laquelle la frontière entre les deux Etats n'aurait pas fait l'objet d'une délimitation négociée. Celle-ci résulte d'une série d'accords ... . La République du Tchad se réserve la possibilité de rétablir les faits ... dans les phases ultérieures de la procédure[14]."

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[13] Ibid.

[14] Emphasis added.

For Chad, therefore, Libya's request was not inadmissible, it was unfounded. Far from taking exception, as a preliminary matter, to the Court's *compétence* to consider a claim based on the absence of any conventional boundary, Chad acknowledged *expressis verbis* the *compétence* of the Court and called upon the Court to examine Libya's claim on the merits and to reject it[15].

3.28 Chad's *Memorial* takes the identical position, raising no question as to the Court's *compétence* to consider Libya's request. On the contrary, Chad itself envisaged the possibility of no conventional boundary ever having existed between Libya and Chad - in putting forward its third alternative theory under which the boundary line presently proposed by Chad would result from colonial *effectivités*. By this fact alone, Chad recognised that the Court was fully *compétent* to resolve the dispute even if its resolution might not result from the application of any international agreement.

3.29 It is, of course, true that when Chad filed its *Memorial*, it was unaware of the geographical extent of Libya's claim, as set forth in the *LM*, for the two pleadings were simultaneously filed. It was in the *CC-M* that Chad could have questioned the Court's *compétence* to examine Libya's claim concerning territories located south of the 1935 line. But Chad has chosen not to do so, even going so far as to expressly recognise that the Court's *compétence* included all that might be required to review Libya's claim, to adjudicate it on the merits and to decide whether or not it should be rejected.

3.30 It is true that, in certain parts of the *CC-M*, Chad has maintained that Libya's version of the dispute does not fall within the Court's *compétence* as set out in the *compromis*[16], giving a variety of reasons. But it is

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[15] In these first two documents submitted to the Court, Chad also mentioned, as an alternative basis of jurisdiction, Article 8 of the 1955 Treaty, which provided for settlement by the Court of disputes over the interpretation and application of that Treaty, opening up questions that went far beyond the confines of the *Accord-Cadre* under Chad's narrow interpretation of the latter instrument.

[16] *See*, *CC-M*, paras. 1.17, 2.09 and 2.82. For example, in a confused section of the *CC-M*, Chad seems to contend that Libya's claim as presented in the *LM* would serve to "transformer unilatéralement la nature juridique du différend que les parties ont soumis à la Cour en vertu de l'Accord-cadre..." by which the Court is requested to "statuer sur les limites de leurs territoires respectifs" (para. 2.09).

At the same time, Chad commits the curious *bévue* of describing the scope of the *Accord-Cadre* in words taken directly from Libya's Notification . It is futile for Chad to contend that a contradiction as to the "nature juridique du différend" exists between how the important to point out that, despite its allegations to the contrary, Chad has never made any formal objection to the Court's compétence, and has even explicitly recognised the Court's compétence.

3.31 It suffices simply to read Chad's conclusions in the CC-M to see that Chad repeats the claim it presented in the CM, requesting the Court to reject Libya's claim on the merits. Chad fails to contend that the Court may not consider any particular aspect of Libya's claim.

3.32 As to Chad's explicit recognition of the Court's compétence, the following passage in the CC-M is revealing:

> "L'accord-cadre de 1989 n'a jamais eu pour objet de demander à la Cour de trancher un différend territorial pré-existant qui aurait porté sur plus de la moitié du territoire du Tchad. En termes simples, la Cour a compétence sur le différend frontalier dans la bande d'Aozou. Aucun compromis ne demande à la Cour de connaître d'une revendication différente, formulée pour la première fois dans le Mémoire de la Libye. ... Ces demandes extravagantes sont assurément inacceptables, tant d'un point de vue procédural, que sur le fond[17]."

3.33 Is Chad trying to raise an objection to the Court's compétence that it unfortunately neglected to set out in its Submissions? At first glance, it would so appear, especially if the above-cited passage is considered in isolation from the rest of the pleading. In fact, this passage has no real meaning; and its highly coloured and totally out-of-place verbiage regarding the

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dispute is expressed in Libya's Notification of the Accord-Cadre of 31 August 1990 and how it is expressed in the LM: they are perfectly in accord.

Chad appears to forget that Libya's initial document in these proceedings had carefully stipulated that the Court should:

> "statuer sur les limites de leurs territoires";

and was based on the contention that no treaty definitively fixed the boundary and that:

> "... accordingly (it) remains to be established in accordance with the applicable principles of international law."

[17] CC-M, paras. 2.82 and 2.83. Similar comments are made in para. 2.95: "...le différend que les deux parties ont ... convenu de soumettre à la Cour, porte sur la localisation exacte de la frontière dans la bande d'Aozou ... aucun différend plus étendu n'a été soumis à la Cour."

"extravagance" of the claims of Libya or the "démesure qui frise le grotesque[18]" (not to mention Libya's "appétit territorial féroce[19]") are merely a certain style of advocacy aimed at tarnishing in the eyes of the Court the image of an adversary party and presenting that party in the most unfavorable light possible. So far as they bear on the Court's compétence, these prejudicial remarks turn out to be entirely gratuitous as a result of Chad's express declarations in the CC-M that it recognises the Court's compétence to examine Libya's claim on the merits, notwithstanding "l'ambition exagérée" that it supposedly reveals:

> "Le gouvernement de la République du Tchad considère cet ensemble d'arguments comme irrecevable sur le fond comme en procédure. Il serait en droit d'exiger l'interruption de la procédure engagée devant la Cour internationale de Justice si profondément dénaturée par l'extravagance des demandes libyennes. Il se gardera cependant de céder à ce qu'il considère comme une provocation politique. Le gouvernement du Tchad fait confiance à la justice internationale et à l'application impartiale des règles du droit international public. Il demande justice, rien de plus[20]".

The same line of reasoning, similarly expressed, crops up in another passage of the CC-M:

> "Le Gouvernement tchadien qui serait en droit de mettre fin à la procédure que la Libye tente de détourner de son objet, a néanmoins, par respect pour la Cour et par souci de voir enfin réglé définitivement le litige de la bande d'Aozou - forgé de toutes pièces par la Libye -, décidé de la poursuivre jusqu'à son terme, sans répondre aux provocations de la partie libyenne... la République du Tchad se placera donc exclusivement sur le terrain juridique et montrera ci-après, que ses droits sur la bande de Aozou ne sont nullement remis en question par l'argumentation développée par la Libye[21]."

3.34 If by this careless, wild language Chad means to say to the Court that it renounces its "droit d'exiger l'intérruption de la procédure" since it has "confiance à la justice internationale", then Chad accepts that Libya's claim be examined on the merits by the Court, without any procedural reservations, counting on the Court's finding that Libya's claim is without merit, and in the "souci de voir enfin réglé définitivement le litige". In other words, Chad accepts that the Accord-Cadre can be interpreted to cover Libya's claim, and consequently, to establish the Court's compétence to adjudicate Libya's claim in all its aspects. In these circumstances, any future objection to the Court's compétence would not merely be unfounded; it would be inadmissible. Any further discussion as to the extent of the Court's compétence as established in the compromis, therefore, would serve no purpose.

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[18] CC-M, para. 2.06 (i).

[19] CC-M, para. 1.03.

[20] CC-M, para. 1.17.

[21] CC-M, paras. 1.69-1.70.

(d) The Lack of Purpose in Embarking on an "Historical" Interpretation of the Accord-Cadre

3.35 The literal and contextual interpretation of the Accord-Cadre leads to clear, precise and consistent conclusions. Even if its "historical" meaning suggested by Chad were correct, it could not in any way prevail over the instrument's authentic interpretation confirmed by the positions taken by the Parties in these very proceedings.

3.36 Hence, it would be a superfluous exercise for the Court to consider Chad's allegations attempting to demonstrate that, when the Accord-Cadre was concluded, Libya acknowledged that its dispute with Chad was strictly a boundary dispute and that it dealt exclusively with title to the so-called "Aouzou Strip". Nevertheless, Libya - out of a concern for re-establishing the truth that the Chadian pleadings attempt to distort - feels it appropriate to present a few short observations on the subject as it relates to the jurisdiction and tasks of the Court. In Chapter XI below, the matter will be dealt with again in the context of the conduct of the Parties.

3.37 The first observation is that Chad's contentions do not relate to the travaux préparatoires of the Accord-Cadre, the relevant documents of which have not been produced by either Chad or Libya. With the exception of the text of the Accord-Cadre itself, no document or declaration of the representatives of the Parties has been produced to date to clarify the intentio partium at the time of concluding the compromis.

3.38 Chad can hardly contend that the Parties' intentions can be proved by relying on statements by third party States or by committees composed of representatives of third party States[22]. For the most part, these types of statements indicate how certain third party States perceived the nature and extent of the dispute; nothing of significance can be inferred from these statements as to the specific intent of the Parties themselves.

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[22] See, CC-M, para. 1.43, et seq., and para. 2.23, et seq.

3.39 In reality, the kinds of documents on which Chad tries to base its arguments are far more peripheral and less relevant than *travaux préparatoires*; they only concern the circumstances in which the *Accord-Cadre* was concluded[23].

3.40 It is clear that no meaning can be ascribed to a random selection of miscellaneous statements of Libya's representatives or other persons as members of international organisations, having no precise or direct connection with the *Accord-Cadre* and which refer to one phase or another of a dispute that has existed for 100 years and concerns such aspects as, for example, accusations of one State's interference in the internal affairs of another State. As Chapter XI will show, the most that can be deduced from the miscellaneous statements made by representatives of Libya is that they were convinced that (i) neither the international instruments cited in Annex I of the 1955 Treaty, nor the Treaty itself, had resolved the dispute, and (ii) the territories located north of the 1935 line were indisputably in Libyan territory.

3.41 Libya never expressly or impliedly excluded the possibility that the legal titles working in Libya's favor concerned other territories located south of the 1935 line. Quite the opposite: Libya had invoked these titles by emphasising its position as successor State to the Ottoman Empire via Italy[24].

3.42 Once the Parties finally agreed to submit to the Court the task of definitively resolving their dispute, without imposing any restrictions, it became necessary for Libya in preparing for these proceedings to conduct a most thorough research into every relevant aspect of the case. The results of this research persuaded Libya of the validity and strength of its legal titles not only to regions north of the 1935 line but also to regions located south of the 1935 line. As a result, Libya submitted its claims to the Court in the knowledge that the Court enjoyed the full *compétence* and power to decide the dispute in its entirety, leaving "no stone unturned". In contrast to Chad, which casts doubt on the extent of the Court's *compétence* and would like to see its *compétence* exercised in a limited fashion, Libya expresses no such reservations. Libya very much hopes the Court will examine all of the Parties' allegations and arguments so that the territorial dispute may be brought to an end, leaving not the slightest obstacle to sincerely amicable relations between Libya and Chad in the future.

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[23] *See*, *Vienna Convention on the Law of Treaties* *op. cit.*, Art. 32.

[24] *See*, para. 11.39, *et seq.*, below.

SECTION 2. The Nature of the Dispute and the Task of the Court

3.43 On the basis of the Accord-Cadre, interpreted in the light of the foregoing comments, the various allegations of Chad, aimed at restricting the reach of the dispute and the mission of the Court, may readily be refuted. These allegations are discussed below under six headings.

(a) The Alleged "Political Nature" of the Dispute as Presented by Libya

3.44 According to Chad, the "ambition exagérée" of Libya would:

> "...sortir le différend de la catégorie des différends juridiques où il avait été cantonné jusqu'alors pour le transformer en différend politique majeur[25]."

3.45 Chad even declares that it would be "en droit d'exiger l'interruption de la procédure engagée devant la Cour internationale de Justice" as a result. But then it goes on to renounce this right "par respect pour la Cour et par souci de voir définitivement réglé le litige[26]". The total inconsistency of these propositions leaps from the page, as can be demonstrated by two simple observations.

3.46 First, if the dispute has really turned into one of a political nature, the Court would not have jurisdiction to resolve it, for under the U.N. Charter and the Statute of the Court itself the Court is a legal, not a political, organ of the U.N. The incompétence of the Court to adjudicate matters of a political nature can hardly be cured by the particular position taken by one of the Parties to the dispute. That is to say, Chad's renunciation of its right to challenge the Court's compétence could not have the slightest effect on whether the Court in fact has compétence.

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[25] CC-M, paras. 1.17. See, para. 3.30, et seq., above.

[26] CC-M, para. 1.69.

3.47 Second, it is clear that the political or legal nature of this dispute cannot depend on the extent of the territory claimed by one Party or the other: it is the grounds on which the claim is based that matter. In the present case, the two Parties base their claims exclusively on the applicable international law in force. Their dispute, notwithstanding the extent of the territory involved, is strictly and indisputably legal in character.

(b) The Nature of the Dispute: "Territorial" or "Boundary"?

3.48 It has been seen above that the "territorial" nature of the dispute could not have been more clearly specified than it was in the text of the Accord-Cadre. The repeated, consistent use of the word "territorial" in the text is the result of a careful choice of words to describe the dispute. Chad's observation that certain O.A.U. documents used the terms "boundary" dispute and "territorial" dispute interchangeably[27], only proves that the terminology used by the O.A.U. cannot be relied on and that the care exercised in the use of legal terminology left much to be desired (as the CC-M itself complains). In contrast, no looseness in the use of terminology is reflected in the Accord-Cadre. The dispute is always characterised (in five different places) as "territorial".

3.49 Admittedly, if the Court should find - as Chad contends - that a boundary has already been established in the borderlands by conventional means, this finding would suffice to resolve the dispute. But if not, the Court will have to determine the boundary itself in order to accomplish the task that the Parties have assigned to it - to resolve the dispute definitively. Such a delimitation of the boundary can only be established on the basis of the legal titles of the Parties over the territory in dispute between them.

3.50 As demonstrated above, the Accord-Cadre identifies the extent of the compétence of the Court in a sufficiently broad manner as to permit the Court to proceed to an attribution of territory. Chad, moreover, does not contest this. On the contrary, Chad fully acknowledges the compétence of the Court in this respect, even to the extent of asking the Court to reject on the merits the Libyan claim which is based, not on a treaty establishing a boundary, but on other legal titles.

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[27] See, CC-M, para. 2.43.

3.51 It will be recalled that, as already mentioned above[28], Chad's acknowledgment of the Court's compétence is also implicit in its request to the Court to base the attribution to Chad of the so-called "Aouzou Strip" on colonial effectivités - Chad's third theory - in the event the Court were to decide that a conventional boundary has not already been established.

(c) The Compétence Ratione Materiae of the Court

3.52 Ratione materiae, the compétence of the Court is not subject to any limitation as to the geographical extent of the territory that may be claimed by one Party or the other, contrary to what Chad asserts. Such a limitation cannot be found in the Accord-Cadre, which entrusted the Court with the task of definitively resolving the entire territorial dispute, without establishing a restrictive definition of what that was.

3.53 In its written pleadings, moreover, Chad has expressly recognised the compétence of the Court to examine Libya's claim on the merits, including the extent of its effect on territories situated south of the 1935 line. In any event, even before the conclusion of the Accord-Cadre, Libya had set out, at least in general terms, its position as to the territorial extent of the dispute. Libya had clearly indicated that it considered itself as successor State to the Ottoman Empire (via Italy) and accordingly that Libya had the right in the course of the resolution of the dispute, to invoke all pertinent legal titles over the full extent of the territories to which these titles attached. This is precisely the scope of the dispute that the Court has been called upon to decide in the compromis.

(d) The Extent of the Court's Powers

3.54 Since the Accord-Cadre is silent as to the Court's powers, it follows that the Court is called upon to exercise, without restriction, its judicial task, including the use of all powers required to arrive at a final resolution of the dispute on the basis of international law.

3.55 It bears repeating once again that if, as Chad contends, the Court were to find that the boundary between Libya and Chad had already been delimited by conventional means, such a finding would resolve the dispute. But if, as Libya is convinced, the Court finds that no conventional boundary has yet been fixed, it must of necessity proceed itself to delimit the boundary in order to accomplish the task entrusted to it by the Parties. This is an operation that a judicial body can carry out by an evaluation of the legal titles invoked by the Parties to the dispute. The precedents cited by Libya in Chapter II of the *LC-M* demonstrate this beyond any doubt.

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[28] See, para. 3.28, above.

3.56 It is to be noted that, in spite of appearances to the contrary, Chad recognizes the correctness of the analysis, for it states -

> "Ce n'est donc que si la Cour concluait qu'aucune frontière n'a jamais existé ... qu'elle pourrait commencer à considérer la revendication exhorbitante (sic) de la Libye concernant son titre sur la moitié du Tchad[29]."

Hence, Chad admits that were such a situation to occur the Court could appropriately proceed itself to fix the boundary on the basis of legal titles, other than conventional titles, of the Parties. The Parties are in full agreement on this point.

(e) The Applicable Law

3.57 There is no disagreement between the Parties that the present dispute is to be resolved by the Court "in accordance with international law[30]", and not *ex aequo et bono*. Thus, all the sources of international law may be relevant. Neither expressly nor implicitly does the *compromis* restrict in any way the power of the Court freely to select the applicable principles and rules in order to resolve the dispute - the principle *jura novit curia* is given its full effect here.

3.58 The basic question here is whether the resolution of the dispute can be based exclusively on conventional norms or whether recourse to norms stemming from other sources of international law will apply. This question does not relate only to general principles and rules of customary international law, it is valid as well to equity, as the Court has indicated in the well-known statement, "... la notion juridique d'équité est un principe général directement applicable en tant que droit[31]".

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[29] *CC-M*, para. 2.15.

[30] Article 38 of the Statute of the Court.

3.59 It is elementary that equity (infra and secundum legem) has an important, continuing role to play in judicial decisions secundum jus. This obvious point should require no further discussion, but Libya is obliged to return to it in order to express its astonishment over the extraordinary effort Chad has made to try to exclude equitable principles. Obviously Chad is afraid of equity; it fears the idea that the Court might find inspiration in equitable principles in seeking to find a just solution in this case. This can only mean that Chad has serious doubts as to the equitable character of its claim.

3.60 The CC-M insists on presenting a veritable caricature of the Libyan position, arguing that Libya's aim is the use of equity "en tant que substitut au droit[32]" and that, in addition, Libya "se trompe d'exercice" because equity has no role to play in land boundary delimitations unlike the major role equity plays in maritime delimitations[33].

3.61 These two allegations are completely wrong. The LM and the LC-M emphasised that Libya has never sought to refer to aequitas contra legem or to aequitas praeter legem. But international jurisprudence and doctrine have made very clear the role aequitas infra legem and secundum legem may play in the application of international rules whether conventional or customary. This applies equally to land boundary delimitations, as a well-known work on the subject attests to[34].

(f) The Order of Questions Submitted to the Court

3.62 In comparing the written pleadings of the Parties, the Court will not discern any real disagreement as to the modus procedendi or, in particular, as to the order in which the Court might wish to address the various issues arising from this dispute.

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[31] Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p.18, para. 71.

[32] CC-M, para. 1.52.

[33] Ibid.

[34] Bardonnet, D.: "Equité et frontières terrestres", Mélanges offerts à Paul Reuter, Paris, Pedone, 1981, at pp. 44-45.

3.63 First, it would be expected that the Court would want to address at the outset the procedural questions relating to jurisdiction and to the extent of its compétence and powers. Without doubt, these issues can be settled rapidly. In fact, as just stated above, the two Parties have effectively admitted that the Court has the full compétence and power required to resolve the dispute definitively. The Parties admit that no restrictions are imposed on the Court as far as the examination of the merits of the claims presented by Libya and Chad is concerned.

3.64 Second, turning to the examination of the merits of the cases, the Court would certainly want to "consider initially whether existing agreements have identified a boundary" between the two Parties, as Libya has put it[35]. Or, to use Chad's words, the Court would "commencer son examen par le Traité de 1955 pour déterminer ... s'il a jamais établi une ligne frontière"; and also examine if "un tracé frontalier avait été ... établi par les textes internationaux de référence[36]".

3.65 In this regard, it should be noted that Libya and Chad have acknowledged their agreement that the "textes de référence" are not to be taken into consideration as "actes" establishing a boundary in the event they "... ne seraient pas ou plus en vigueur le 24 décembre 1951", as Chad has correctly put it[37]. Since the positions of the Parties here are identical[38], it follows that neither

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[35] See, LC-M, para. 2.10.

[36] CC-M, paras. 2.10 and 2.12.

[37] See, CC-M, para. 11.20. The LC-M uses much the same language: see, LC-M, para. 3.09. See, also, para. 4.07, et seq., below.

[38] The relevant passage in the CC-M:

> "La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur a l'indépendance de la Libye. On a ici une double limitation: sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales et, d'autre part, les actes internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendence libyenne." (CC-M, para. 11.20; see, also, CC-M, para. 11.42.)

The relevant passage in the LC-M:

Party can, with any credibility, change its position on this matter in subsequent phases of the proceedings. In Libya's view, any such change of position would not be admissible in the circumstances.

3.66 The Court would be free - following a review of the relevant treaties - to find that a conventional boundary does indeed exist that is binding on Libya and Chad. Libya is convinced that the Court will not so find; Chad has declared that it is convinced that the Court will do so. It is clear that if the Court does find the existence of such a conventional boundary, the Court will have resolved the dispute (to the extent the boundary covers the full length of the Libya-Chad frontier). On the other hand, if the Court's review should produce a negative result - no conventional boundary - the Court would, it is respectfully suggested, be obliged to proceed further in its analysis, examining the legal titles that might form the basis of a delimitation operation. Unquestionably, the Court has the full compétence to itself determine such a delimitation, as the Parties have expressly recognised both in the compromis concluded between them and in the interpretation they have given it in their pleadings.

3.67 Third, the Court would then have to decide which of the legal titles of the Parties are determinative in the delimitation of the territories comprising the Libya-Chad borderlands. Having identified these titles and, in the case of conflicting titles, having decided which is the better title, the Court would then be able to decide upon the limits of the territories of the Parties.

"... Article 3 expressly required that these agreements be 'en vigueur' on the date of Libya's independence in order to be taken into account in recognizing any boundary emerging from them. If the list included 'actes' not 'en vigueur' on that date, they would have to be ignored for not having fulfilled that essential condition of Article 3. As an annex consisting of an exchange of letters between the heads of the Libyan and French negotiating teams, which was referred to in Article 3, Annex I was necessarily subordinate to Article 3 and had no independent life of its own." (LC-M, para. 3.09.)

PART II

THE ISSUE OF THE TREATY BASIS OF THE BOUNDARY

CHAPTER IV. THE DIFFERING POSITIONS OF THE PARTIES CONCERNING THE EXISTENCE OF A CONVENTIONAL BOUNDARY

4.01 The differences between the cases presented by the Parties, in broad outline, have been set out in Chapters I and II above. Pre-eminent among these differences are the diametrically opposed views of Libya and Chad as to whether a conventional boundary exists between them.

SECTION 1. The Two Positions Compared

4.02 Chad's Memorial suggests that the issue posed in this case is simple: since the 1935 Treaty never took effect in respect to the agreed boundary line for Libya's southern boundary east of Toummo, the 1899-1919 line agreed between Great Britain and France was Libya's southern boundary on the critical date - when Libya became an independent State. According to Chad, this was confirmed by the 1955 Treaty.

4.03 However, Chad's case does not stop there. It offers the Court three separate theories to choose among, all of which are claimed to lead to the exact same line, the 1899-1919 line, supplemented by the relevant portion of a straight line connecting Toummo and the starting point of the 1899-1919 line[1]. These three theories were thoroughly analysed in Libya's Counter-Memorial[2]. Aside from the obvious implication to be drawn from the submission of three separate theories - that Chad did not have sufficient confidence in any one theory to base its case entirely on that theory - the result is that Chad's case is highly complex, as the LC-M demonstrated[3].

4.04 Whilst it would be misleading to suggest that the present territorial dispute is a simple matter to resolve, the essential elements of Libya's case are perfectly straightforward:

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[1] Chad's three separate theories are summarized in the LC-M, paras. 1.32-1.39.

[2] See, LC-M, Parts III, IV and V.

[3] See, LC-M, para. 1.37, where Chad's theories were compared to an intricate circus trapeze act.

- On the critical date (the date of Libya's independence), there was no conventional southern boundary of Libya east of Toummo;

- The 1955 Treaty did not modify that situation; it recognised the boundary status quo on the critical date, an affirmation of uti possidetis juris;

- Since then, there has been no agreement between Libya and France or Libya and Chad fixing Libya's southern boundary.

Thus, the Court's task, as explained in the previous Chapter, once it has determined that there is no conventional boundary binding on Libya and Chad, will be to examine the legal titles that might form the basis of a delimitation operation, a straightforward task for which the Court has full compétence.

4.05 In the following two Chapters, the two principal elements comprising the issue over the treaty basis of the Libya-Chad boundary will be dealt with: (i) the meaning and effect of the 1955 Treaty; and (ii) the boundary status quo on the critical date as recognized by Article 3 of the 1955 Treaty. Part III (Chapters VII and VIII) will then turn to an examination of the legal titles claimed by the Parties.

4.06 There are two points to be taken up before going into the detail of the 1955 Treaty and the other international agreements of possible relevance. First, in Section 2 below, certain deceptive points of agreement and disagreement between the Parties concerning the 1955 Treaty will be discussed. Second, in Section 3 below, the meaning and effect of U.N. General Assembly Resolution 392(V) of 15 December 1950 - a matter on which the positions of the Parties remain wide apart - will be dealt with in the light of the CC-M.

SECTION 2. Deceptive Points of Agreement and Disagreement Concerning the 1955 Treaty

4.07 In its Chapter 11, devoted to a discussion of the 1955 Treaty, the CC-M makes two statements with which Libya is in full agreement:

> "La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur à l'indépendance de la Libye. On a ici une double limitation: sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales et, d'autre part, les actes

> internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendance libyenne[4]."

Under the first criterion, French colonial effectivités are clearly ruled out, and thus Chad's third theory is ruled out as well, for it relies wholly on French effectivités[5]. Moreover, Chad's second theory sustains a mortal wound in the light of this admission in the CC-M, for it relies in part on French effectivités[6]. Under the second criterion, there are ruled out under Article 3 "actes internationaux" that were not, or were no longer, "en vigueur" on the critical date.

4.08 The reason why this apparent agreement between the Parties is deceptive is that Chad actually has failed to apply its own criteria. French colonial effectivités continues to be the mainstay of Chad's third theory. And it remains, as well, an indispensable part of its second theory, for it is only through resort to alleged French colonial effectivités in the borderlands that the 1919 line became transformed into a boundary opposable to Italy, according to this theory[7]. As to the second criterion, a number of the "actes internationaux" on which Chad's case depends - both under its first and second theories - were not "en vigueur" on the critical date, including general "actes" that appear on the Annex I list. This will be discussed further in Chapter VI below. The point to be made here is that the CC-M totally ignores this critical fact, which the CM had specifically referred to[8].

4.09 Then there is a point of disagreement concerning the 1955 Treaty, the effect of which is less significant than might first appear. This concerns the question whether the Annex I list was intended to be exhaustive. Libya has set out a number of reasons why it seems clearly not to have been intended to be exhaustive, particularly in the light of French and Chadian conduct[9]. However, in the last analysis it is not an issue that really matters much, for several reasons.

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[4] CC-M, para. 11.20.

[5] See, LC-M, para. 5.01, et seq.

[6] See. LC-M, paras. 4.02 and 4.199, et seq.

[7] Ibid.

[8] See, CM, pp. 122-123, para. 81.

[9] See, LC-M, para. 3.12, et seq.

4.10 First, in arguing its case, Chad has made extensive use of agreements not included in the Annex I list, including the following:

- 1900 Franco-Italian Accord;
- 1902 Anglo-Italian Accord;
- 1912 Franco-Italian Agreement;
- 1924 Anglo-French Protocol and Declaration.

Similarly, Libya has referred to as relevant some 11 agreements that fail to appear on the Annex I list[10].

4.11 Second, even were the boundary to be determined solely on the basis of the listed agreements, no conventional boundary would emerge that was agreed to be recognised under Article 3 of the 1955 Treaty. This is demonstrated below in Chapters V and VI.

SECTION 3. **U.N. General Assembly Resolution 392(V) of 15 December 1950**

4.12 Chad seeks to downplay the significance of General Assembly Resolution 392(V), after an initial attempt to argue that the Resolution supports Chad's thesis. That initial attempt, as put forward in the CM, relies on the following propositions:

- France had repeatedly and publicly presented before the various U.N. organs the texts applicable to Libya's southern boundary and her presentation had not been challenged. Thus, the Member States of the U.N. had acquiesced in the French position[11].

- In particular, Italy did not react to the corrective statement made by the French representative to the Ad Hoc Political Committee and must therefore be deemed to have acquiesced in the French position as regards Libya's southern boundary[12].

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[10] See, LC-M, para. 4.09.

[11] See, CM, p. 222, para. 64; and CM, p. 232, para. 98, where it is repeated that the French position had been "énoncée clairement".

- The U.N. Commissioner for Libya also remained silent as to the southern boundary of Libya in his Second Report of 30 October 1951[13].

- The General Assembly, in adopting Resolution 392(V), may have had in mind the French claim for rectification of the Libya-Algeria boundary in the area of Ghat and Serdeles rather than Libya's southern boundary[14].

4.13 Libya responded comprehensively in its Counter-Memorial to these arguments, both as regards the facts and the inferences to be drawn from them[15]. It is, of course, highly significant that Chad nowhere seeks to explain what was the portion of Libya's boundary with French territory not already delimited by international agreement to which reference is made in Resolution 392(V), if not Libya's southern boundary - only Libya's southern boundary fulfilled this criterion.

4.14 In its Counter-Memorial, Chad appears to have jettisoned its initial attempt to maintain that Resolution 392(V) supported its thesis that a conventional Libyan southern boundary existed at the time the Resolution was adopted (15 December 1950). Now, the argument is rather that the 1955 Treaty in fact gave effect to the recommendation in Resolution 392(V). Chad asserts that the overriding object and purpose of that Resolution was to ensure that no dispute arose as to Libya's external frontiers, and that the Resolution must be read in this sense. Two possibilities existed. Either the frontiers were already delimited by international arrangements - in which case there would be no dispute - or, alternatively, the frontiers were not yet delimited, in which case it was recommended that France and Libya conclude an agreement which would effectively delimit the frontier[16].

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[12] CM, p. 228, para. 84.

[13] CM, p. 231, para. 96.

[14] This seems to be the implication to be drawn from CM, p. 227, para. 82.

[15] See, LC-M, paras. 8.34-8.43.

[16] See, CC-M, para. 11.136.

4.15 It is necessary once again to examine the pertinent provisions of the Resolution:

> "That the portion of its boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted on the request of either party by a third person to be selected by them or, failing their agreement, to be appointed by the Secretary-General.[17]"

Libya's boundary on the west as far south as Toummo had in 1950 been delimited by two international agreements: the 1910 Treaty between France and the Ottoman Empire; and the 1919 Accord between Italy and France. It had not been delimited to France's satisfaction, however, and France informed the U.N. that it planned to negotiate directly with Libya certain modifications or rectifications of Libya's boundary with Algeria. Those mentioned concerned the boundary in the area of Ghat; and it was clear that these were not negotiations that fell within the scope of the Resolution, for during the debate prior to its adoption, the United States representative sponsoring the Resolution stated explicitly that it did not concern boundary rectifications; and the French representative made a speech pointing out the need to distinguish clearly between the different operations of delimitation, demarcation and rectification[18]. Thus, there was no ambiguity on this point when the Resolution was adopted.

4.16 So when the Resolution was tabled and voted on in December 1950, Libya's boundary on the west as far as Toummo had been delimited and was intended by France to be rectified in the region of Ghat in negotiations with Libya; but this rectification did not fall within the scope of the Resolution. This left the Libyan boundary east of Toummo for consideration; and it was as to that boundary that the French representative corrected an earlier "bévue" committed by France in connection with the 1949 Report of the Four Power Commission, when certain omissions and incorrect references as to the international agreements considered relevant to that boundary had been made by the French participants, and these mistakes were reflected in the subsequent Study of the Secretariat[19]. There was no question at the time as to where France thought the boundary line to lie, for the map attached to the Four Power Commission Report showed both the line east of Toummo espoused by France

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[17] The Resolution is taken up again below in Chapter X in the context of the post-World War II conduct of France.

[18] See, LM, paras. 5.388-5.389. See, also, Supplementary Annex, No. 6.1, Vol. 2, hereto.

[19] See, LM, paras. 5.375-5.385.

(the 1919 line as far as 18°E longitude) and what appears to be the 1935 line. Thus, the only confusion created by France's mistake was over the international agreements on which France relied, not over the direction of its line. In the event, the Secretariat's Study concluded that it was "not clear whether and to what extent this frontier had been delimited or demarcated".

4.17 During the debate on the Resolution and before the vote was taken, the French representative corrected the earlier "bévue" by referring to all the texts on which France relied to support the line it claimed to be Libya's southern boundary. Had France's position at the time been that Libya's boundary east of Toummo had been delimited by the international agreements cited, it should in all logic have voted against this portion of the Resolution relating to Libya, for there was no boundary that had not been delimited, according to the French thesis. There was no question that the discussion just prior to the vote on the Resolution was directed at Libya's southern boundary east of Toummo. Nevertheless, France voted for the Resolution. In doing so, it formally acquiesced in the position that Libya's boundary east of Toummo was to be delimited in negotiations with Libya when it achieved independence. In fact, in the statement of France's representative, M. Naudy, correcting the earlier "bévue", he ended by saying: "The matter was therefore governed at present by all the texts he had just mentioned." This was a formulation not unlike the wording of Article 3 of the 1955 Treaty: "les frontières sont telles qui résultent des actes internationaux en vigueur" at the time Libya achieved independence. M. Naudy's statement did not cause the Ad Hoc Committee to reconsider the need for adopting this part of the Resolution concerning Libya's boundary. It proceeded to adopt the Resolution with the support of France.

4.18 The CC-M is incorrect in saying that Libya considers the 1955 Treaty to be "sans rapport avec" the Resolution[20]; and the CC-M fails to come to grips with the specific intent of the Resolution by suggesting, for example, that it revealed the desire and intent of the Ad Hoc Committee that Libya's boundaries be definitively settled[21].

4.19 The Resolution reflected the uncertainty of the U.N. that Libya's boundary east of Toummo had been delimited, in spite of France's correction of the mistaken references to the texts it felt to be relevant. France's vote for the Resolution effectively barred France from later claiming that Libya's southern boundary had been delimited and hence did not require to be negotiated with Libya. What the Resolution called for was that France and Libya should sit down to negotiate the southern boundary, examining the texts of the international agreements on which France's position relied, or others en vigueur in 1951, as well as maps of the area, and then to agree that a conventional boundary existed at the time of Libya's independence (and where it lay), or that it did not, and in the latter case, to negotiate over where that boundary line should be drawn.

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[20] See, CC-M, para. 11.133.

[21] See, CC-M, para. 11.134.

4.20 The Parties are in agreement that no such negotiations concerning the southern boundary took place[22]. Thus, Article 3 was only a first step in the carrying out of the mandate of the U.N. in Resolution 392(V); Article 3 cannot be construed, as the CC-M suggests, as having itself accomplished the delimitation by reference to some (but not all) of the texts referred to by M. Naudy in 1950, just before the vote on the Resolution, a reference which the U.N. considered not to have resolved the question of Libya's southern boundary - and which France, by voting for the Resolution, must be deemed formally to have conceded. The Resolution called for negotiations, not an attempt to impose the French position in an indirect, ambiguous manner without any effort to seek a meeting of minds.

4.21 It is appropriate to ask why, then, after the signing of the 1955 Treaty, France and Libya did not proceed to negotiate the delimitation of the southern boundary. Although this question was addressed in the LC-M[23], the reasons why this did not take place will be summarised here, in the light of additional evidence from the files of the Quai d'Orsay recently made available to Libya.

4.22 The overriding reason was that, with the Edjélé oil field discovery (only confirmed in January 1956), rectification of Libya's boundary with Algeria became urgent. The oil boycott imposed on France after the 1956 Suez crisis made this oil discovery all the more important to France. It will be recalled that at this time Algeria was part of metropolitan France and thus its boundaries were of greater importance to France than those of the colonies grouped within the A.O.F. and the A.E.F. As a result, French ratification of the 1955 Treaty and the evacuation of French troops from Fezzan were explicitly made subject to the condition of Libyan acceptance of the rectifications of its boundary with Algeria delimited in 1919, so as to ensure that Edjélé lay on the French side of the line, together with other related modifications in France's favour along the same sector of the boundary. This was achieved through the 1956 Accord[24]. Most of 1956 was consumed in the difficult negotiations concerning this sector of Libya's boundary.

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[22] See, e.g., CC-M, para. 11.129.

[23] LC-M, paras. 3.109-3.113.

4.23 A second reason was that serious border incidents had broken out along the Algerian frontier, particularly in the Ghat-Toummo area. Although Annex I to the 1955 Treaty had designated three points through which this boundary should pass, thus substantially rectifying the boundary delimited by the 1919 Accord (even taking into account the vagueness of its provisions), Libya had balked at proceeding to demarcate the boundary, and the three points did not at all resolve the course of the boundary between Ghat and Toummo. Many questions remained to be dealt with. The contention in the CC-M that, as allegedly called for by Resolution 392(V), "le Traité de 1955 contient une délimitation précise", is refuted by the facts. The part of the boundary over which the parties did negotiate in 1955 in order to rectify the 1919 Accord, by designating three points, that is the sector between Ghat and point 1010 (where the Algerian and Niger boundaries meet west of Toummo), remained unresolved. The course of that line was not definitively fixed at all. Thus, following the signing of the 1955 Treaty, the energies of the Libyans and the French were devoted to this part of the line as well, it being considered by the French that the imprecision of this boundary was contributing to the border incidents. Furthermore, oil companies were seeking licences to prospect in the area, and it was feared that conflicting claims would arise as a result of the boundary there not being defined.

4.24 The other reasons why negotiations never occurred pursuant to the Resolution, and following the principles agreed in Article 3 of the 1955 Treaty, are set out in paragraph 3.113 of the LC-M:

- The French Government had developed second thoughts about ratifying the 1955 Treaty, and it was not even presented to the French Parliament until November 1956, less than a month before the agreed date for the evacuation of Fezzan. It is reasonable to conclude that had the Edjélé oil discovery not been made, and had Libya not been willing to agree that these fields lay in French territory, the 1955 Treaty would not have been ratified by France;

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[24] Demarcation of the line agreed has never occurred; and Libya has never ratified the 1956 Accord.

- During the 1956 negotiations to rectify the Algerian boundary, Libya did propose discussing the southern sector, as well, and was rebuffed by France[25];
- The Algerian war, Libya's recognition of the Algerian F.L.N., the Suez crisis and the low status of France at the time throughout the Arab world made boundary negotiations with France after 1956 very difficult for Libya to undertake without arousing the strong criticism of other Arab countries;
- From the French standpoint, the best tactic was "to let sleeping dogs lie", and to hope that when the question of Libya's southern boundary was taken up later with Chad no difficulties with Libya would be confronted[26].

4.25 Thus, when Chad became independent in 1960, there had as yet been no negotiations concerning its boundary with Libya. Contrary to what the CC-M and Chad's Map Atlas have claimed, U.N. maps until 1963 consistently showed a Libyan southern boundary that did not accord with the 1919 line claimed by France[27]. The first U.N. map was dated December 1949, showing the 1935 line[28]. U.N. Map No. 241 of January 1950, attached to the Secretariat's Report, showed a line that was neither the 1919 nor the 1935 line, and it was accompanied by question marks to illustrate the Study's conclusion that it was not clear whether Libya's southern boundary had been delimited. It was approximately this line that appeared on Libya's first official map of this boundary, Map No. 1 attached to Libya's 1955 Petroleum Regulation No. 1, promulgated a few days after the signing of the 1955 Treaty in August 1955 (Map LR 2). U.N. Map No. 256 of May 1950, showing the 1935 line, was attached to Commissioner Pelt's first annual report; U.N. Map No. 256(A), a version of the same map in Arabic, issued in November 1955, three months after the signing of

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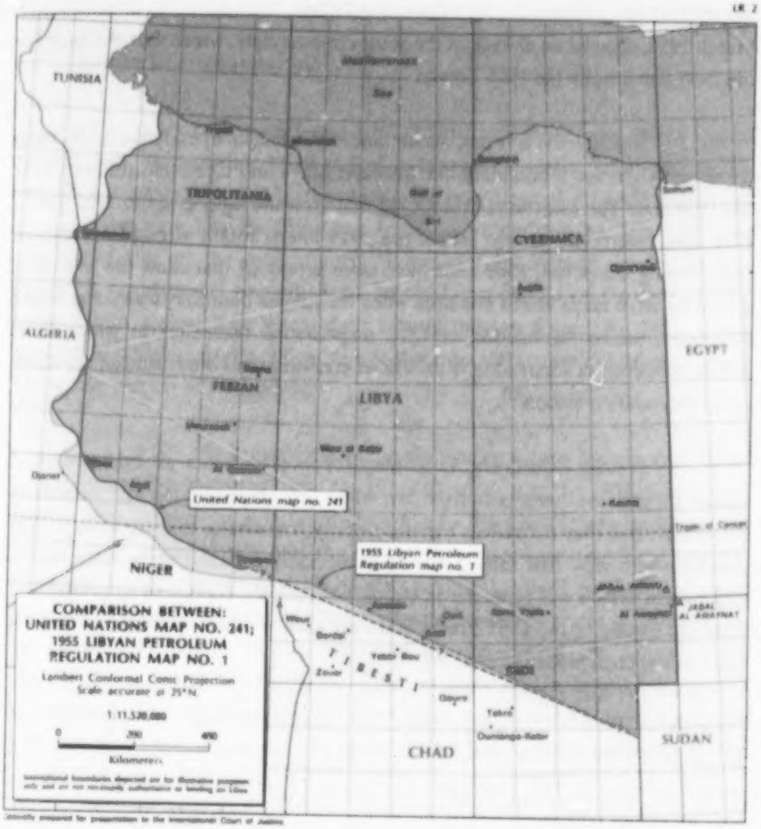
[25] See, LC-M, para. 3.110, et seq.

[26] See, e.g., Supplementary Annex, No. 6.7 (Document 10).

[27] See, Supplementary Annex, No. 2, paras 26-28.

[28] U.N. Map No. 235; see, LM, para. 5.396 and the U.N. maps appearing there.

LR 2


TUNISIA
Mediterranean
Sea
Tripoli
Misratah
Benghazi
TRIPOLITANIA
Gulf of
Sirt
CYRENAICA
ALGERIA
EGYPT
Sabha
FEZZAN
LIBYA
Murzuk
Waw al Kabir
Al Qatrun
Djanet
Ghat
United Nations map no. 241
Kufra
Tropic of Cancer
NIGER
1955 Libyan Petroleum
Regulation map no. 1
Aozou
Ouri
Sarra Wells
JABAL
AL AWAYNAT
Al Awaynat
Bardai
Yebbi Bou
Zouar
T I B E S T I
Gouro
Tekro
Ounianga-Kebir
CHAD
SUDAN
COMPARISON BETWEEN:
UNITED NATIONS MAP NO. 241;
1955 LIBYAN PETROLEUM
REGULATION MAP NO. 1
Lambert Conformal Conic Projection
Scale accurate at 25°N
1:11,520,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

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the 1955 Treaty, showed the 1935 not the 1919 line. U.N. Map No. 256, Rev. 1, of March 1958, showed no change in the southern boundary, which was portrayed as the 1935 line despite the 1955 Treaty.

4.26 As a result, at the time of Chad's independence, U.N. maps consistently showed a boundary line between Libya and Chad that differed from the 1919 line. The assertion in the CC-M that after the signing of the 1955 Treaty U.N. maps were changed to reflect the 1919 line is totally wrong[29]. No U.N. maps during the period 1949-1963 have been produced that show the 1919 line, and these were maps issued at a time when the Libyan boundary was under active discussion, unlike the handful of U.N. maps issued thereafter to which Chad refers, produced in connection with various economic and other studies unrelated to the boundary question[30].

4.27 Certainly, U.N. maps cannot be taken as evidence as to where Libya's southern boundary lay, and they all contained the customary disclaimer; but they do reflect the uncertainty concerning that boundary. The generally-held view that Libya's southern boundary required to be delimited by negotiation, which was reflected in Resolution 392(V), continued to prevail well after the signing of the 1955 Treaty and even after the independence of Chad in 1960, as the U.N. maps showed.

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[29] See, CC-M, para. 10.32.

[30] See, Supplementary Annex, No.2, paras. 26-28.

CHAPTER V. THE MEANING OF ARTICLE 3 OF THE 1955 TREATY

SECTION 1. Introduction

5.01 The Court may well regard the 1955 Treaty as the logical starting point in its consideration of how to resolve the territorial dispute in this case. But contrary to what Chad contends, the provisions of the 1955 Treaty will not, in Libya's view, lead the Court to a resolution of this dispute. It is in fact the last, historically, of the international agreements to consider in determining whether a conventional southern boundary of Libya existed on the critical date. Entered into almost four years after Libya's independence, the 1955 Treaty established that date as the critical date in this case and set out the agreed criteria for the recognition of a boundary.

5.02 As brought out in the discussion of good faith in Part VII of the LC-M, in Libya's written pleadings France's conduct in the 1955 negotiations has not been invoked as a cause of challenge to the 1955 Treaty insofar as the present case is concerned; and this remains so in spite of evidence recently uncovered by Libya in the Quai d'Orsay's archives that the French Government engaged in the extraordinary conduct of placing listening devices so as to record the internal discussions of the Libyan delegation during the January 1955 negotiations in Paris[1]. Nevertheless, Libya regards French conduct during the negotiations as an important element to be taken into account in interpreting the 1955 Treaty[2], especially since the drafts of the Treaty were prepared by the French in the French language.

5.03 Thus, almost all of Section 2, Chapter 11 of the CC-M, that relates to the enforceability of the 1955 Treaty requires no response[3]. Libya is not, as the final conclusion in the CC-M suggests, attempting to avoid "les exigences claires du principe pacta sunt servanda". Libya accepted and performed the obligations it undertook under the 1955 Treaty; but this did not resolve the dispute between Libya and Chad.

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[1] This evidence was found in files made available to Libya at the end of May 1992 following Libya's démarche to the French referred to in the LC-M, para. 1.44, fn. 37, to which a reply was received on 18 March 1992. A sampling of the transcripts made by the French Government of these intercepted discussions appears as Exhibit LR 6.4, hereto, and is briefly discussed in Supplementary Annex, No. 6.4.

[2] See, LC-M, para. 7.38.

[3] There are, however, a number of assertions in that section of the CC-M requiring correction; and this will be accomplished in the course of this pleading.

5.04 There is no doubt at all that Article 3 of the 1955 Treaty is directly pertinent to resolving the present dispute: on its face it related, *inter alia*, to the southern boundary of Libya. But the Article must be applied in its entirety - both in respect to what it prescribes and what it forbids. In other words, Article 3 bound the parties to it not just in respect to the positive factors to take into account in determining a boundary, but also as to the factors that it ruled out in making such a determination.

5.05 It is not easy to discern with any precision just what Chad's position is today as to the meaning of the 1955 Treaty; and it is evident that this position has shifted in major respects from Chad's case as expressed in Chad's Application filed on 3 September 1990 with the Court and in Chad's supplementary letter to the Court of 28 September 1990.

5.06 In its Application, Chad appeared to base its case on the principle of *uti possidetis juris*, maintaining that the boundary claimed by Chad was that which existed at the time of the independence of Libya (1951) and Chad (1960) as inherited from their colonial predecessors. The Application adds that the 1955 Treaty did not modify the boundary situation that existed in 1951, at the time of Libya's independence, but rather confirmed the applicability of *uti possidetis* and the boundary line "tel qu'il résulte des accords" listed in an earlier paragraph, namely the agreements of 1898, 1899, 1919 and 1924 (the latter not appearing on the Annex I list), to which Italy is claimed to have acquiesced in the 1902 Accord.

5.07 In its subsequent letter of 28 September 1990, Chad described the alleged conventional boundary as resulting from a whole series of Anglo-French and Franco-Italian agreements and stated that the 1955 Treaty had *confirmed* this boundary. This interpretation of the Treaty was described in the *CM* as the "consécration explicite de 'l'*uti possidetis* de 1951'"[4].

5.08 By the time Chad's *Memorial* was submitted, this position seemed to have shifted, for under Chad's *first theory* the 1955 Treaty *itself* is said to have determined with precision the boundary line[5]. That this was not Chad's position at the time it presented its case to the O.A.U. Subcommittee of experts and jurists is seen from the fact that the Subcommittee's Second Report observed that the Treaty did not itself fix the Libyan boundary[6]. The Subcommittee's observation seems to indicate that Chad had at that time (1988) only set forth its second theory - that the 1955 Treaty was the explicit consecration of uti possidetis 1951 - minus the element of French effectivités, which first makes its appearance in the CM. This had been the publicly proclaimed French position: that at the time of Libya's independence in 1951 a conventional boundary existed arising from a series of Anglo-French and Franco-Italian agreements en vigueur at that time.

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[4] *CM*, p. 142, para. 2.

5.09 The lack of clarity in Chad's position arises from the fact that, at least up until the filing of its Counter-Memorial, Chad avoided certain key questions concerning the meaning of Article 3 of the 1955 Treaty. Was it the agreement of the parties to the 1955 Treaty, as expressed in Article 3, to accept the boundary situation as it existed on the critical date - the date of Libya's independence, 24 December 1951 - as determined by international agreements then in force? Or does Chad maintain that the 1955 Treaty determined Libya's boundaries with France and French territories regardless of where any of the conventional boundaries lay on the critical date or whether, as to the relevant part of Libya's frontier, there was any conventional boundary at all on the critical date?

5.10 Libya's position is very clear: Article 3 of the 1955 Treaty confirmed the parties' acceptance of the status quo on the critical date based on a strict application of the principle of uti possidetis juris in accordance with the Article's criteria: "actes internationaux en vigueur" on the critical date. It was not intended to modify the status quo, so determined, on the critical date; it recognised it.

5.11 In the light of the CC-M, it is necessary once more to examine Article 3 of the 1955 Treaty in order to bring out where the Parties differ. Its "object and purpose" will be discussed first, then the "ordinary meaning" to be given to the terms of the Treaty, followed by its "context" and travaux préparatoires[7].

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[5] See, analysis of Chad's first theory in the LC-M, para. 3.01, et seq.

[6] See, CM, Livre VI, p. 351, at p. 379.

SECTION 2. The Treaty's Object and Purpose

5.12 The objectives of Libya and France in entering into Article 3 of the 1955 Treaty were not the same. Chad wrongly assumes that the parties to the Treaty must necessarily have had the common objective of fixing a definitive boundary. This overlooks the fact that there may well be circumstances when parties to a treaty do not have identical views on an issue and yet may wish to include language in the treaty dealing with the matter, though not resolving it. This is a perfectly normal course of action, and it was the case here. France may have had the misplaced confidence that by referring to certain legal instruments, using the formula of Article 3, the boundary it sought would be agreed by Libya in a subsequent phase. Libya, on the other hand, had given the matter of its southern boundary only a superficial review; and it had not examined the "actes internationaux" referred to in Article 3 and Annex I, let alone looked into whether they were "en vigueur" in 1951. The attention of both Libya and France during the 1955 negotiations had been directed at Libya's boundary with Algeria south of Ghat; and it is evident that the French negotiating team had been given instructions to avoid an open discussion of the "actes internationaux"[8].

5.13 The background of the 1955 Treaty is relevant in considering the objectives of the parties. France initially urged Libya shortly after its independence to enter into a Treaty of Amity that would have constituted an alliance providing for the long-term military occupation of Fezzan by French forces. France was spurred on by the fact that the United Kingdom and the United States were negotiating agreements of this kind with Libya. At the end of 1954, Libya made it clear that continued occupation of Fezzan, and an alliance of any kind with France, were out of the question.

5.14 France was faced with other problems as well having a direct bearing on the terms of a treaty of amity with Libya. These were: (i) the war with the F.N.L. in Algeria and serious unrest in Tunisia and Morocco; (ii) the discovery of oil at a time when the oil boycott in the wake of the Suez crisis was in effect against France; (iii) indications of valuable mineral deposits in the north of the Tibesti massif, as well as military pressures to rectify the 1899-1919 line in the Tibesti region so as to encompass the entire massif and to control a strategic road running through this region; and (iv) to avoid further loss of prestige in North Africa and with the Arab world.

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[7] See, 1969 Vienna Convention on the Law of Treaties, Arts. 31 and 32.

[8] See, Supplementary Annex, No. 6.6 (Documents 3, 4, 9, 13 and 14).

5.15 As a result, at the outset of the negotiations in 1955, France sought to rectify all of its existing and claimed boundaries with Libya but to do so, at least initially, in an indirect way in the context of appearing to apply the international agreements in force on the date of Libya's independence. The Edjélé oil discovery, however, required France to come out in the open after the Treaty was signed and overtly to insist on rectifying the Ghadamès-Ghat sector as a condition of the evacuation of Fezzan and the ratification of the 1955 Treaty. As to the Ghat-Toummo sector, when Libya accepted only two of the three points France wished to have designated in Annex I as points through which the boundary passed, Ambassador Dejean, two days before the planned signature date, threatened to refuse to sign on behalf of France unless the third point was agreed; and Libya was forced to capitulate. Moreover, the French team entered the July-August negotiations with authority to make a boundary proposal - if this were possible without raising the question as to the validity of the French thesis concerning Libya's southern boundary - substantially departing from the 1899-1919 line espoused by France, so as to embrace the entire Tibesti massif, while making what to France was a concession to Libya in the eastern sector of this boundary[9].

5.16 However, France emphatically did not want to have the treaty basis of its thesis concerning Libya's southern boundary examined or questioned. Its aim was to get general agreement to abide by the boundary that emerged from "actes internationaux en vigueur" in 1951; then it hoped during a later phase to gain acceptance of the 1899-1919 line. It believed it had convinced Libya that the 1935 Treaty did not meet the criterion of Article 3. Furthermore, that Treaty had not been included in the Annex I list. Thus, the main stumbling block had been overcome in the mind of the French Government.

5.17 Libya's objectives were entirely different. The overriding purpose of the 1955 Treaty for Libya was to get the French out of Fezzan. The

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[9] See, Supplementary Annex, No. 6.6 (Document 5).

Libyan Prime Minister made it clear in the negotiations that he did not want to tie the question of settling Libya's boundaries to the taking effect of the 1955 Treaty[10]. The Libyan Government was not prepared to discuss the boundary issue; it had not studied the question or examined the relevant international agreements; and it had not yet engaged outside technical and legal advisers to prepare the Government for boundary negotiations. Mr. Ben Halim's position on the boundary at that point was quite simple: he believed Libya was obliged by U.N. Resolution to accept whatever boundary existed on the date of its independence; and in January he agreed to such a formula. All these points will be taken up again below when the Treaty's travaux préparatoires are discussed.

5.18 Libya was only partially successful in adhering to this approach as concerned its boundaries. Although the southern boundary east of Toummo was never discussed in any kind of detail - a fact that is not in dispute between the Parties -, Libya was forced to consider the boundary changes France wanted to make in the Ghat-Toummo sector, and it reluctantly agreed to two geographical points to be mentioned in Annex I as lying on this boundary, and under great pressure just before signature, to a third point. Libya was particularly vulnerable to such pressure for it was imperative to accomplish the French evacuation of Fezzan as quickly as possible.

Section 3. Ordinary Meaning of the Terms of Article 3

5.19 The examination of Article 3 of the 1955 Treaty here in this Chapter is primarily directed at Chad's first theory: that Article 3 itself delimited Chad's boundary with Libya and was not, as Libya maintains, the recognition of the territorial status quo on the critical date.

5.20 Chad appears to assume that the ordinary or literal meaning of Article 3 of the 1955 Treaty supports its thesis that a conventional boundary existed between Libya and what is now Chad prior to 1955, that this boundary "resulted" from certain of the international acts listed in Annex I (notably, the 1899 Declaration, the 1902 Accord, and the 1919 Convention (8 September)), and that Article 3 of the 1955 Treaty confirmed the existence of this boundary. Chad also asserts that Libya is seeking to escape from the consequences of her acceptance of this boundary and accordingly is in breach of the fundamental rule of the law of treaties incorporated in the principle pacta sunt servanda.

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[10] See, Supplementary Annex, No. 6.4 (Document 6 - the draft proces-verbal of the January 1955 meetings), and LM, para. 5.459, et seq., covering the July-August meetings.

5.21 All this is patently false, as Libya will now proceed to demonstrate. First, it is necessary to recall the precise terms of Article 3 of the 1955 Treaty:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annex I)."

The initial point to note about this text is that its geographical scope extends well beyond the issue of whether there exists today, or existed in 1955, a "frontière" (boundary) separating the territory of Libya from the territory of what is now Chad. It was a global provision purporting to regulate boundary questions as between Libya, on the one hand, and the totality of what were in 1955 parts of metropolitan France (Algeria) or French colonies (including Tunisia, a protectorate) bordering on Libya, on the other hand. Its geographical reach extended from the juncture between Tunisia and Libya on the Mediterranean coast to the juncture between Libya and Sudan (Map LR 3).

5.22 So, what did Article 3 achieve? One of the most important and significant words in Article 3 is the word "reconnaissent"[11]. Chad indeed places a good deal of emphasis on the use of the word[12]. But Chad invokes the use of the word "reconnaissent" to attack a false target, namely, the alleged Libyan thesis according to which Article 3 did not embody any definitive

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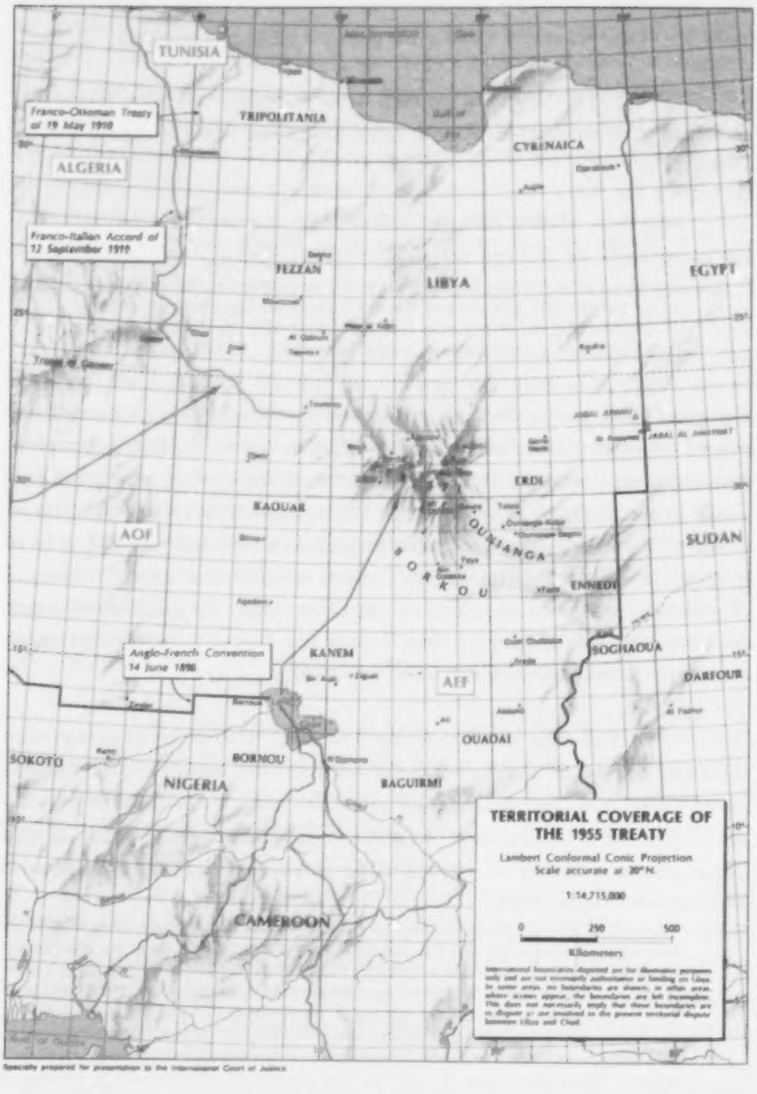
[11] It is obvious that the word "reconnaissent" or "recognise" has a broad range of possible meanings. Chad wrongly assumes that what it calls "l'institution de la reconnaissance" presumes the intent to arrive at a definitive resolution of the boundary (see, CC-M, para. 11.32). What is meant by "recognise" depends on the intentions of the parties and must be determined in that context, not vice versa. Similarly, citations to other treaties using what Chad calls the technique of "délimitation par référence" does not determine what in 1955 Libya and France intended by Article 3. Each situation must be examined in context. States may choose to refer to other treaties in order definitively to settle a boundary; or they may make such a reference, as here, to provide an agreed basis for a possible settlement. See, para 5.39, and fn. 44, below.

[12] See, CC-M, paras. 11.27-11.32.

LR 3


TUNISIA
Franco-Ottoman Treaty of 19 May 1910
TRIPOLITANIA
ALGERIA
CYRENAICA
Franco-Italian Accord of 12 September 1919
FEZZAN
LIBYA
EGYPT
Kufra
JABAL ARKANU
JABAL AL UWAYNAT
ERDI
KAOUAR
AOF
OUNIANGA
BORKOU
SUDAN
ENNEDI
Faya
Fada
Anglo-French Convention 14 June 1898
KANEM
BOGHAOUA
DARFOUR
Al Fashir
AEF
OUADAI
SOKOTO
NIGERIA
BORNOU
BAGUIRMI
CAMEROON
30°
25°
20°
15°
10°
5°
TERRITORIAL COVERAGE OF THE 1955 TREATY
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas where some appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

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settlement of the "boundary problem"[13] nor regulate any boundary question[14]. This is not, and never has been, the "Libyan thesis". Article 3 has to be read as a whole, in its context, and in the light of the object and purpose of the Treaty, as the general rule of interpretation set out in Article 31 of the Vienna Convention on the Law of Treaties makes clear. What the parties were "recognising" by virtue of Article 3 of the 1955 Treaty was that the boundaries separating Tunisia, Algeria, French West Africa and French Equatorial Africa on the one hand, from Libya on the other hand, were the boundaries that resulted from the international acts in force as of the date of Libyan independence, an indication of which (but an inaccurate indication) was given in Annex I. What both parties were agreed upon, and what Article 3 achieved, was that pre-existing boundaries binding on France and Italy that resulted from international acts in force on the date of Libya's independence, were recognised as being the boundaries between Tunisia, Algeria, French West Africa and French Equatorial Africa, on the one hand, and Libya, on the other hand[15].

5.23 The lack of respect for the text of Article 3 demonstrated in the CC-M is startling: no reluctance is shown just to rewrite this provision to accord with Chad's interpretation. Typical examples are the following:

> "... par l'art. (...), les Parties 'reconnaissaient' expressément que la frontière résulte d'actes internationaux que l'annexe I énumère[16]."

* * *

> "... les deux parties y 'reconnaissent' que la frontière entre la Libye et l'A.E.F. - à laquelle le Tchad a succédé - résulte des instruments énumérés[17]."

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[13] CC-M, para. 11.32.

[14] See, CC-M, para. 11.23.

[15] Whether such international acts were limited to those listed in Annex I of the Treaty (as Chad contends) or not (as Libya contends) is of no consequence.

[16] CC-M, para. 1.58.

[17] CC-M, para. 8.09.

The trick practiced here in Chad's pleading is to delete three key words from the text of Article 3 - "sont celles qui[18]" -, as demonstrated below on the text of Article 3 itself by crossing out these three words:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française, et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, ~~sont celles qui~~ résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes."

From here, it is an easy next step to arrive at this further deformation of Article 3:

> "Les deux Hautes Parties reconnaissent comme frontières séparant les territoires ... les tracés résultant des actes internationaux en vigueur ... ."

But this is self-defeating: if the text of Article 3 has to be rewritten in order to mean what Chad says it means then, ipso facto, the text does not have the meaning that Chad wishes it to have.

5.24 Reading Article 3 as a whole, and in conjunction with Annex I, which depends on Article 3, it is apparent that it achieved only a partial settlement of Libya's boundary problems, and did not, in particular, resolve the question of Libya's southern boundary east of Toummo. Why is this so? A careful study of the Franco-Ottoman 1910 Convention shows that it was a true boundary agreement between Tripolitania and what was then the French protectorate of Tunisia, concluded directly between the two Powers then exercising sovereignty over Tripolitania and Tunisia respectively. It is a detailed agreement expressly delimiting a boundary between Tripolitania and Tunisia; and it was subsequently demarcated in 1911 with the erection of 333 boundary pillars along the boundary[19].

5.25 In principle, the same holds true for the boundary between Libya and Algeria (then part of metropolitan France), though here there are complications. This boundary (between Ghadamès and Toummo) had been delimited by virtue of the Franco-Italian Accord of 12 September 1919, again

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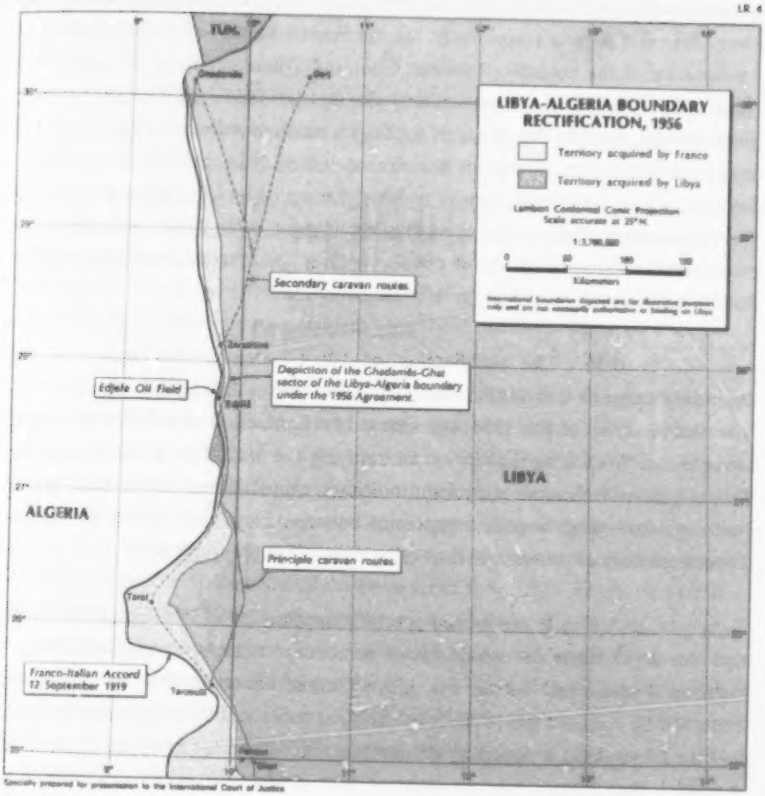
[18] See, LC-M, para. 3.05, fn. 3, where it is noted that the Arabic text of these words in Article 3 reads (translated into French): "sont les frontières qui".

[19] See, LM, paras. 5.111-5.112.

LR 4


TUN.
Ghadamès
LIBYA-ALGERIA BOUNDARY RECTIFICATION, 1956
Territory acquired by France
Territory acquired by Libya
Lambert Conformal Conic Projection
Scale accurate at 25° N.
0
50
100
150
Kilometers
Secondary caravan routes.
Zarzaitine
Depiction of the Ghadamès-Ghat sector of the Libya-Algeria boundary under the 1956 Agreement.
Edjele Oil Field
Edjeleh
LIBYA
ALGERIA
Principle caravan routes.
Tarat
Franco-Italian Accord 12 September 1919
Ghat
9°
10°
11°
12°
13°
14°
30°
29°
28°
27°
26°
25°

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concluded directly between the two Powers at the time exercising sovereignty over Libya and Algeria respectively; but the French demanded a clarification and rectification of the boundary between Ghat and Toummo (up to the point 1010 where the Algerian boundary ended) during the 1955 negotiations between France and Libya[20]. This accounts for the inclusion in Annex I of the paragraph making it clear that, as regards the Franco-Italian 1919 Accord, the boundary between Ghat and Toummo was to pass through three identified points. As already mentioned above, the identification of these three points in Annex I did not settle the course of the line in this sector for it left open a number of questions still to be resolved.

5.26 The rectification of the Ghadamès-Ghat sector of the boundary between Libya and Algeria in the light of the Edjélé oil discovery, effected by virtue of the 1956 Agreement (the conclusion of which was insisted upon by the French as their price for ratifying the 1955 Treaty and evacuating Fezzan), is an even more significant indication that Article 3 of the 1955 Treaty had not resolved all boundary problems between Libya and France as regards French territory or possessions bordering upon Libya (Map LR 4).

5.27 It was indeed precisely because Article 3 of the 1955 Treaty had the legal effect for which Libya contends - namely, to confirm that, as between France and Libya, the Libya-Tunisia boundary was the boundary delimited by virtue of the 1910 Convention, as subsequently demarcated in 1911, and the Libya-Algeria boundary was the boundary delimited by virtue of the 1919 Accord - that France was so insistent that the course of the Libya-Algeria boundary be clarified and rectified in Annex I of the 1955 Treaty itself (as regards the Ghat-Toummo sector). The precise course of the boundary between Libya and Algeria is not at issue in the present case, and the clarifications and rectifications of that boundary agreed upon in 1955 and 1956 are relevant for the purposes of the present dispute only insofar as they shed light on the true interpretation of Article 3 of the 1955 Treaty. There is no doubt that Article 3 of the 1955 Treaty, read literally, and in conjunction with Annex I, had the immediate legal effect only of confirming or rectifying those boundaries that had already been delimited by the international acts claimed by France to be en vigueur in 1951; and that is why France insisted upon, and succeeded in achieving (in Annex I to the 1955 Treaty and in the 1956 Agreement), what she conceived to be essential rectifications and clarifications of the Libya-Algeria boundary as delimited by virtue of the 1919 Agreement.

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[20] See, generally, LM, paras. 5.448-5.490.

5.28 Thus, the text of Article 3 makes it clear that it did not create, *ex novo*, boundaries where they did not exist by, for example, transforming into a genuine boundary line a line that served a different purpose. *The role of Article 3 was to render incontestable those boundaries, binding on Libya and France on the critical date, which the Colonial Powers had fixed conventionally (that is, real boundaries) prior to the critical date*. It is precisely for that reason that Article 3 has been cited in the literature as a prototype of a treaty provision consecrating the principle *uti possidetis juris*[21].

5.29 But, surely, it may be argued, if this was the *sole* immediate legal effect of Article 3, that legal effect was extremely limited. This is, however, to ignore the true significance of Article 3 of the 1955 Treaty. In 1955, Libya was a newly independent State in Africa, the forerunner of the many newly independent States in Africa that were to emerge during the next twenty years or so. In 1955, there was uncertainty as to what would be the attitude of these newly emerging States in Africa towards the boundaries they might inherit as a result of agreements between Colonial Powers during the colonialist period or, as a result of administrative arrangements made by a single Colonial Power. It was not until some eight years later - on 25 May 1964 - that the African Heads of States and of Government approved the Cairo Declaration declaring that all the Member States (of the O.A.U.) undertook to respect the frontiers existing at the moment when they achieved independence[22].

5.30 But, it may be contended, why was reference made in Annex I of the 1955 Treaty to the 1899 Declaration, to the Anglo-French Convention of 8 September 1919 and to the 1902 Accord, if the sole immediate legal effect of Article 3 of the 1955 Treaty was to confirm the continued applicability, as between France and Libya, of such boundaries as resulted from those international acts on the Annex I list as were binding on them?

5.31 Here we are in the realm of speculation, since no evidence has as yet been forthcoming from Chadian or French sources as to the genesis of the list of agreements set out in Annex I. Both the CM and the CC-M merely pose possible answers to the puzzle of why this list was inserted in Annex I in the final days of the negotiations in August 1955. The complete absence of any discussion in the record of the Annex I list suggests that it was added at the last minute - in quite a rush it would appear - as a perfunctory listing of the agreements believed by France to be relevant texts to be examined[23].

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[21] *See*, *CM*, p. 76, para. 99.

[22] It was entirely consistent that Libya registered no reservation to the Declaration.

5.32 There is also another possible reason - and here the significance of the word "reconnaissent" in Article 3 of the 1955 Treaty needs to be considered further[24]. The use of this word demonstrates that (leaving aside the rectification of the Ghat-Toummo sector of the Libya-Algeria boundary brought about by Annex I of the 1955 Treaty itself) Article 3 was purely declaratory of pre-existing boundaries. It did not purport to fix, to settle or to delimit boundaries that had not previously been fixed, settled or delimited as between Powers competent to do so. However, as Article 3 was supposed to apply globally to all boundary questions as between Libya and French territory and possessions bordering on Libya, some mention had to be made of the unsettled issue of Libya's southern boundary east of Toummo. France was well aware that this was, and remained, an unsettled issue. A major effort had been made to resolve it as between France and Italy in 1935, but ratifications of the 1935 Treaty were never exchanged as the Treaty prescribed; and France had admitted in 1935 in the Exposé des motifs presented to the French Parliament that, prior to the conclusion of the 1935 Treaty, no boundary existed between Libyan territory and the territory of French Equatorial Africa to the east of Toummo.

5.33 How to resolve the dilemma? France did not wish to enter into substantive negotiations with Libya on the course of the boundary east of Toummo; the documents in the French diplomatic archives emphasise that the texts on which the French position relied were not to be taken up and discussed. This was the view of the Govenor General of the A.E.F. and of the Ministre de la France d'Outre-Mer; and it was incorporated in the instructions of the Ministre des Affaires Etrangères to the French negotiating team as they resumed negotiations in mid-July 1955[25]. Chad admits yet again in its Counter-Memorial

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[23] See, para. 5.89, et seq., below, where Annex I is discussed further.

[24] See, para. 5.22, and fn. 10, above.

[25] See, fn. 8, above.

that the 1955 negotiations bore almost exclusively upon the segment of the boundary separating Libya from Algeria and Niger[26]. A convenient solution appeared to be to include in the Annex I list references to certain international acts that *might be thought relevant* to the determination of Libya's southern boundary and to leave the 1935 Treaty off the list. Although France was well aware that no *boundary* between Libya and French Equatorial Africa had resulted from the 1899 Declaration, the 1902 Accord, or the 1919 Anglo-French Convention, the French no doubt had it in mind that they *could maintain* that such a boundary had resulted from these acts; and in the course of subsequently delimiting this boundary they hoped to gain acceptance by Libya of this boundary espoused by France east of Toummo.

5.34 Libya has convincingly demonstrated in its earlier pleadings that neither Article 3 of the 1955 Treaty itself, nor any one or combination of the international acts listed in Annex I, fixed a boundary separating the territory of Libya from the territory of what is now Chad. Whatever kind of limit to French expansion eastwards towards the Nile Valley had been agreed upon between Britain and France under the 1899 Declaration was certainly not an agreed boundary between these two Powers, as Chad readily admits; nor did it subsequently become such a boundary by virtue of the 1919 Anglo-French Convention. *That* Convention may have established, as between Britain and France, a north/south boundary line, subsequently to be delimited and demarcated by virtue of the 1924 Anglo-French Protocol and Declaration, dividing French possessions from the Anglo-Egyptian Sudan[27]. But it most certainly did not establish a boundary along the southeast line indicated in Article 3 of the 1899 Declaration (whatever may have been the precise direction of that line), far less as that line may have been modified as a result of fixing its terminal point at the juncture of 24°E longitude with 19°30'N latitude. Even if this were not the case, it is clear that Italy (exercising sovereignty over Libya at the time) vigorously protested and refused to accept the 1919 Anglo-French Convention, not least because it purported to shift the north/south boundary (and hence the end point of the southeast line) further north by fixing its terminal point on the 24th parallel at 19°30'N latitude.

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[26] *See*, *CC-M*, para. 11.123.

[27] It is thus striking that these 1924 instruments were omitted from the Annex I list, strongly suggesting that the Annex I list was not meant to be exhaustive. This is confirmed by the fact that the 1924 instruments were mentioned in Chad's Application filed with the Court on 3 September 1990, before the preparation of its pleadings.

5.35 Libya has also convincingly demonstrated that the 1902 Accord did not have the legal effect attributed to it by Chad[28]. Moreover, the inclusion in Annex I of the 1902 Accord was patently in error, given that this Accord was not in force on the date of Libya's independence (by reason of France's failure to notify it to Italy under the terms of Article 44 of the Italian Peace Treaty of 1947), a condition expressly insisted upon by Chad[29]. The inclusion in Annex I of this Accord could not retrospectively bring back into force as between France and Libya an "international act" which, by virtue of Article 44 of the Italian Peace Treaty, must be considered to have been abrogated as between France and Italy by reason of France's failure to notify the Accord to Italy under the terms of, and within the time-limit specified in, that particular provision of the Peace Treaty.

5.36 Even were the position otherwise, it has also been conclusively demonstrated by Libya that the key sentence in the 1902 Franco-Italian Accord about the "limit of French expansion" referred only to French expansion to the east of France's possessions of Tunisia or Algeria which adjoined the western frontier of the vilayet of Tripoli, and did not refer at all to Libya's undetermined southern boundary to the east of Toummo[30]. It is manifestly clear that the 1902 Accord did not constitute a boundary treaty, nor did it concern the régime of a boundary, if only for the reason that Italy had no capacity at the time to determine the boundaries of Tripolitania, which was under the undisputed sovereignty of the Ottoman Empire in 1902. At most, the 1902 Accord can be construed as a political assurance given to and accepted by Italy, in her capacity as potential inheritor of Ottoman rights in and over Tripolitania, that French designs did not extend to encroachment eastwards from Tunisia and Algeria over what were generally regarded at the time as the approximate western limits of the vilayet of Tripoli, as shown notionally on a map referred to in the Accord by a dashed, wavy line, and not identified on the map's legend as a boundary.

5.37 Chad, after having reproduced the French texts of Article 3 and Annex I of the 1955 Treaty, appears to assume that a simple reading of these provisions suffices to resolve definitively what it refers to as the "boundary dispute". Chad specifically states:

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[28] See, LC-M, para. 4.90, et seq.; see, also, para. 6.42, et seq., below.

[29] See, CC-M, para. 11.20. For the same reason, the inclusion on the list of the Franco-Italian Accord of 12 September 1919 was also in error. It, too, had been abrogated as a result of not being notified under the Italian Peace Treaty.

[30] See, LC-M, paras. 4.106-4.125, setting out cogent reasons to support this conclusion.

> "Il n'y a donc pas lieu de compliquer inutilement le litige: il suffit de consacrer un texte conventionnel parfaitement clair et de lui donner son sens ordinaire[31]."

5.38 It has already been illustrated above how in Chad's pleadings the text of Article 3 is sought to be modified[32]. But even as to the unmodified text, Libya's conception of what is the ordinary (or literal) meaning of Article 3 differs radically from that of Chad, in the following respects:

- Article 3 did not establish any boundaries where no boundaries had previously existed, and Annex I in no way modified this result. The use of the word "reconnaissent" demonstrated that it was designed to be declaratory of existing boundaries and not constitutive of boundaries where no boundaries had previously existed. If a boundary resulted from any of the international acts en vigueur in 1951, notwithstanding that the boundary might have been determined and delimited by agreements or other international acts concluded between France and other Powers at the time entitled to exercise sovereignty over what is now Libya, that boundary was recognised in the 1955 Treaty as binding between France and Libya if it was binding between them on the critical date[33];

- This reading of Article 3, read in conjunction with Annex I[34], is further supported by the absence of any reference in the preamble to the 1955 Treaty or in the text of the Treaty itself, to G.A. Resolution 392(V). Chad appears to attach no significance to this striking omission[35]. Yet it is clear that this omission is crucial. What the General Assembly had recommended in Resolution 392(V) as already discussed above, was that:

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[31] CC-M, para. 11.12.

[32] See, para. 5.23, above.

[33] It is paradoxical that France either proposed, or succeeded in, rectifying all of the actually delimited boundaries, with the exception of the Tunisian boundary; and even that boundary was proposed to be discussed at the outset of the negotiations in January 1955. When the July-August 1955 negotiations started, the French team had authority even to seek a major change in the course of what France had maintained, before then, to be Libya's southern boundary in the Tibesti area.

[34] Which depends on, and is subject to the provisions of, Article 3.

> "... the portion of [Libya's] boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments ... ." (Emphasis added).

- It is clear from the debates in the General Assembly preceding the adoption of G.A. Resolution 392(V) that the General Assembly had concluded that there was a portion of Libya's boundary with French territory which had not already been delimited by international agreement, and that this portion included the boundary with what was later to become Chad. And yet, notwithstanding this specific mandate from the General Assembly, no negotiation took place between France and Libya in 1955 to delimit any boundary between Libya and French territory east of Toummo, and there was virtually no discusson at all of that boundary[36]. All that resulted was the general formula in Article 3 whereby the boundaries of Libya with French territory were to be "those which result from international acts in force at the date of Libya's independence". Commenting on the significance of Article 3, Chad states:

> "Il s'agit en quelque sorte de la réaffirmation sous une autre forme des termes de la résolution 392(V)[37]."

- If Article 3 of the 1955 Treaty was designed to be simply a "reaffirmation" in another form of the terms of Resolution 392(V), then it is clear that the parties to the 1955 Treaty did not, by that Treaty, discharge the specific mandate conferred on them by the Resolution to "negotiate" the delimitation of the Libyan boundary with French territory east of Toummo. This is particularly the case where, as Libya has established in its written pleadings, the "international acts" that might be relevant to the delimitation of the boundary east of Toummo (whether or not listed in Annex I) do not disclose the existence of any "boundary" between Libya and what is now Chad that was binding on Libya and France on the critical date.

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[35] See, CC-M, para. 11.138.

[36] This is conceded by Chad; see, CC-M, paras 11.123-11.129.

[37] CC-M, para 11.137.

- The "ordinary meaning" of Article 3 of the 1955 Treaty is not the abstract ordinary meaning of the words used, resulting from a purely grammatical analysis:

  > "Il ne s'agit donc pas d'un sens ordinaire abstrait, mais d'un sens ordinaire concret qui ne peut être discerné que par l'examen du terme en question dans le contexte de ce terme et à la lumière du but et de l'objet du traité. C'est ce sens qui peut être retenu dans le processus de l'interprétation du traité[38]."

  So, one has to begin by looking at the specific meaning of the text calling for interpretation - in this case, Article 3, read in conjunction with Annex I, in its application to the question of whether a "boundary" between Libyan and French territory east of Toummo "resulted" from any of the "international acts" in force at the date of Libya's independence to which an incomplete and partly erroneous reference is made in Annex I. No such "boundary" had ever been delimited between France and Libya, nor indeed between France and Italy in respect of Libya (save in the 1935 Settlement). Nor indeed, for that matter, had a "boundary" ever been delimited between France and Great Britain along the southeast line described in the 1899 Declaration, as "interpreted" in 1919.

- This is not to deprive Article 3 of the 1955 Treaty of all practical meaning. It was clearly operative to confirm, as

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[38] Yasseen, "Interprétation des traités d'après la Convention de Vienne sur le Droit des Traités", Recueil des Cours, Vol. 151, 1976-III, p. 26.

> between France and Libya, Libya's western boundary with Tunisia and (subject to the rectifications and clarifications embodied in Annex I) Libya's western frontier with Algeria[39]. But these frontiers are not in issue in the present case. The only conclusion that can properly be drawn from a consideration of the text of Article 3 of the 1955 Treaty, including Annex I, and in the light of the circumstances of the conclusion of that Treaty, is that these provisions neither delimited a boundary between Libyan and French territories east of Toummo, nor did they confirm a pre-existing "boundary" in that sector.

5.39 As was noted in Section 1 of this Chapter, Chad's position as to the meaning of Article 3 of the 1955 Treaty has not only changed since it set forth its thesis to the O.A.U., and since its Notification to the Court filed on 3 September 1990, but is also unclear. For example, in discussing Article 3, the CC-M states that:

> "Par ces dispositions, les deux Parties reconnaissent que la frontière doit être déterminée à l'aide de certains actes ...[40]."

This suggests that Article 3 set the ground rules for a subsequent delimitation based on (with the aid of) the "actes internationaux en vigueur" in 1951 and, thus, was purely declaratory. But this seems to be in contradiction with what is said a few pages further on, where the CC-M suggests that the Article 3 formula represented:

> "... une technique de délimitation particulière: la référence à des textes internationaux antérieurs[41]."

What these words appear to suggest is that the reference to the earlier texts accomplished the delimitation, and that Article 3 was constitutive. The CC-M goes on to say that the exact delimitation is easy to arrive at: from the texts a line may be deduced or "results" from the texts; and no map is needed, thus avoiding problems of interpretation and compatibility between map and text. The "recognition" operates directly to make opposable a line emerging from these texts, and hence:

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[39] However, before the ink was dry on the 1955 Treaty, France had insisted that the Algerian boundary between Ghadamès and Ghat, so confirmed, be rectified. Furthermore, the Ghat-Toummo sector was not sufficiently delimited to be able to demarcate it.

[40] CC-M, para. 11.20. Emphasis added.

[41] CC-M, para. 11.34.

> "... la valeur ou l'opposabilité aux Etats parties à la Convention des textes internationaux auxquels il est fait référence est sans importance[42]."

Such an interpretation suggests that Article 3 established a boundary by mere reference to agreements listed in Annex I, regardless of their validity or opposability to Libya (and presumably whether or not they were *en vigueur* in 1951). The precedents cited - to show that this technique of delimitation by reference to international texts is well-known and wide-spread - show nothing of the kind[43]. The terms used in these other treaties were entirely different from Article 3: they referred to "frontière établie", "frontières définies", or "frontières définies et tracées", or "boundaries established"[44].

5.40 In describing this interpretation of Article 3, the *CC-M* makes this candid admission: "Cette formulation n'est pas innocente[45]." But how can this statement be squared with Chad's repeated assertion that Article 3 is simple and clear and its meaning can be discerned from the text without the aid of *travaux*? Chad's remark certainly suggests that France's intention was to lead

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[42] *CC-M*, para. 11.35.

[43] *See*, *CC-M*, para. 11.36, *et seq*.

[44] Chad seems to assume that the exact meaning and precise effects of Article 3 of the 1955 Treaty may be determined by way of analogy, relying on international agreements that concerned other States and different regions. Evidently Chad chooses not to follow the admonition of Charles De Visscher that, on the one hand (and as a general rule) -

> "... la prédominance naturelle dans les rapports internationaux de situations fortement individualisées sur les situations générales réduit notablement le champ d'application de l'analogie.";

and on the other hand, in respect more specifically to treaties -

> "(c)elle-ci n'a manifestement qu'une place très restreinte dans le droit conventionnel et de façon plus générale dans le droit particulier ... . On ne la conçoit guère ici comme légitimant un élargissement des dispositions arrêtées par les Parties". De Visscher, C.: *Problèmes d'interprétation judiciaire en droit international public*, Paris, 1963, p. 40.

[45] *CC-M*, para. 11.27.

Libya on to ultimately accept the "opposability" of a situation that was not in fact well-defined or well-known, and as to which Libya was in total ignorance, since there had been no negotiations on this subject and the Annex I list had appeared at the last minute without explanation or discussion.

5.41 Of course, this apparent inconsistency in Chad's case is reflected in the conflict between Chad's first and second theories, in reality two alternative cases, supplemented by a third case - French effectivités alone, which had no relation at all to the text of Article 3. Chad maintains that Article 3 (and Annex I) of the 1955 Treaty resolved the question of the land boundary between Libya and Chad. It is not acceptable, therefore, for Chad to offer two alternative theories as to the meaning of this pivotal agreement, and a third that ignores it. It is not acceptable for Chad to argue that it is not necessary to choose among the three theories, for they lead to the exact same line. It is not acceptable for Chad to dodge the question as to what Article 3 means if, in fact, under "actes internationaux en vigueur" in 1951 the international boundary between Libya and Chad either did not exist - as Libya has demonstrated - or was a line different from that claimed by Chad. It would be an extraordinary coincidence if three such radically different theories should lead to the same precise line.

5.42 The CC-M has suggested that the principle of uti possidetis has virtually gained the status of a rule of jus cogens[46]. Such a view is clearly wrong, since it would result in the nullification of any treaty that modified a boundary resulting from the application of the principle of uti possidetis. But if Chad's view were correct, it would lead to the conclusion that for Article 3 to have modified the boundary between Libya and Chad as it existed on the critical date in 1951, applying the criteria of Article 3 - a strict application of uti possidetis juris - would be in contravention of a rule of jus cogens, and hence invalid.

5.43 In this case, Chad is put to the proof of establishing where the boundary, if any, lay in application of the principle of uti possidetis juris, as defined in Article 3. For this can be the only meaning emerging from a literal meaning of the text of that Article. In the next Chapter, it will be demonstrated that this is an impossible task, for no conventional boundary in conformity with the criteria of Article 3 existed on the critical date.

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[46] See, CC-M, para. 3.33.

SECTION 4. Context of Article 3

5.44 The object and purpose of Article 3, as well as the ordinary meaning of its text, have been examined above. It is now necessary to consider its context before turning to supplementary means of interpretation.

(a) The 1956 Agreement

5.45 No doubt the various companion agreements and annexes of the 1955 Treaty are part of its context. But before taking up these provisions, there is another agreement that had an overriding importance as part of the context of Article 3 of the 1955 Treaty. This was the 1956 Agreement concerning rectification of the Algerian boundary, for reaching agreement on these boundary changes, whose primary aim was to ensure that the Edjélé oil fields belonged to France, was imposed by specific amendment to the French law authorizing ratification of the 1955 Treaty (the Isorni amendment) as a prior condition to ratification. The 1956 Agreement made it apparent that Article 3 of the 1955 Treaty was not intended by France to resolve the delimitation of Libya's boundaries, for in the sector of Libya's boundaries of greatest interest by far both to Libya and France, it required a subsequent agreement in 1956 to attempt to fix the course of the boundary, which had not even been discussed in the 1955 negotiations.

5.46 Hence, it is incorrect to assert, as the CC-M does, that Article 3 was intended to resolve all uncertainties over Libya's boundaries, as the following extract wrongly suggests:

> "Elle marque la volonté de ses auteurs de mettre fin à une situation encore marquée par le doute ou l'incertitude[47]."

When the 1955 Treaty was signed on 10 August 1955, the French Government knew full well that it had not resolved the doubts or uncertainties along the Algerian boundary with Libya, for the 1919 Accord did not produce a line acceptable to France. However, rather than face up to the issue in the 1955 negotiations, France postponed it until the matter of ratification came up; then Libya's agreement to this rectification of the boundary was imposed as a condition of ratification. In similar fashion, the three points designated in Annex I of the 1955 Treaty brought about a change in the sector of the Algerian boundary south of Ghat; but they did not resolve the delimitation of this boundary as modified, as has been shown above.

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[47] CC-M, para. 11.27.

5.47 The situation as to what the French regarded as Libya's southern boundary was similar. The French came to the July-August negotiations armed with a proposal of the French military to rectify in the Tibesti area the 1919 line (which France claimed to be the boundary) to meet military objectives, and because of the results of recent explorations in this region, that had given rise to expectations of important mineral deposits[48]. Apparently, the French negotiators did not find an opportunity to table this new boundary proposal without opening up the whole French thesis as to a southern boundary to scrutiny. Their instructions were not to allow this to happen and only to advance the rectification proposals if the occasion arose without risk to France's thesis[49].

(b) The 1955 Convention

5.48 Turning to the other agreements and annexes accompanying the 1955 Treaty, the CC-M focusses on the following provisions:

- Article 5 of the Treaty (para. 11.53);
- Article 1 of the Convention de bon voisinage (paras. 11.55-11.57);
- Articles 9, 10 and 11 of the same Convention (paras. 11.59 and 11.65); and
- Article II of Annex III of the Convention particulière (para. 11.66).

The first provision, Article 5, was part of the Treaty itself; it concerned arrangements for consultation over mutual defence in the event of a military attack against North Africa. For this purpose, France's territories were defined in Article 5 - not as those over which it had sovereignty, but as those for which it had assumed responsibility for their defence[50]. This included at the time the Libya-Chad borderlands, but no longer Fezzan.

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[48] See, para. 6.241, below, and Map LR 27C.

[49] See, Supplementary Annex, No. 6.6 (Document 9).

5.49 The last sentence of Article 5 refers to Libyan territory in this way:

> "En ce qui concerne la Libye, il s'agit du territoire libyen, tel qu'il est défini à l'article 3 du présent traité."

The CC-M contends that the last phrase of this sentence:

> "... marque bien la conviction des Parties que le territoire libyen est, dans cet article (that is, Article 3), délimité avec l'ensemble des territoires limitrophes."

But the phrase is no more than a reference back to Article 3 and is entirely consistent with the interpretation that the boundary was expected to be delimited soon, in accordance with the criteria established in Article 3. The Algerian boundary south to Ghat and between Ghat and Toummo had in fact not been definitively delimited in 1955, for the northern sector was modified in 1956, and south of Ghat the points designated in Annex I still left unresolved a number of open questions as to the course of that boundary. Beyond the third agreed point in Annex I (point 1010) and Toummo, there were various widely differing scenarios as to how to draw the boundary[51] (Map LR 5). The Algerian boundary in both sectors was of much greater concern to France in the event of hostilities than Libya's southern boundary.

5.50 The other provisions listed above in paragraph 5.48 concerned not the boundary but the "régime frontalier"[52]. The French diplomatic records show that details of this "régime" had been formulated several years before in proposals made by the Governor General of the A.E.F. and the Ministre de la France d'Outre-Mer. Some, it appears, had already been put into effect. This was at a time well before Article 3 allegedly fixed Libya's boundaries.

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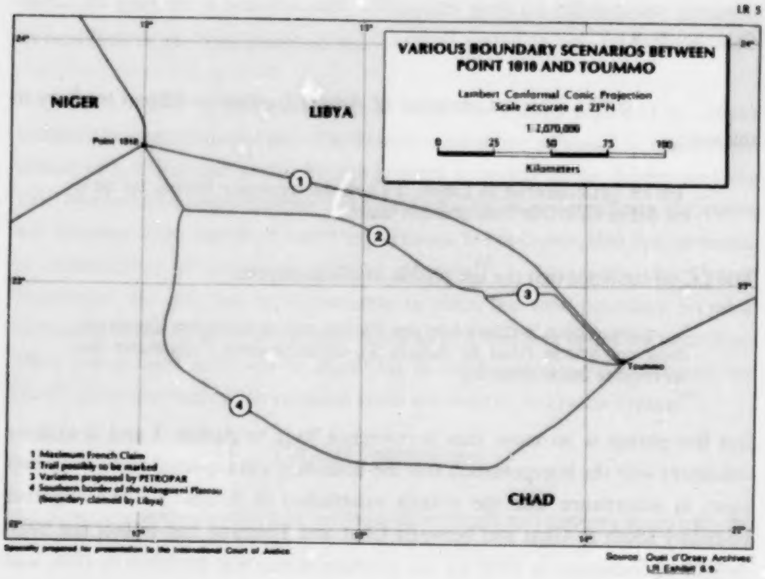
[50] Article 5 defined French and Libyan territories in this way:

> "En ce qui concerne la France, il s'agit des territoires dont elle assume la défense et qui sont limitrophes de la Libye ... En ce qui concerne la Libye, il s'agit du territoire Libyen tel qui est défini à l'article 3 du présent Traité."

[51] See, Supplementary Annex, No. 6.9 (7).

[52] Supplementary Annex, No.6.6 (3).

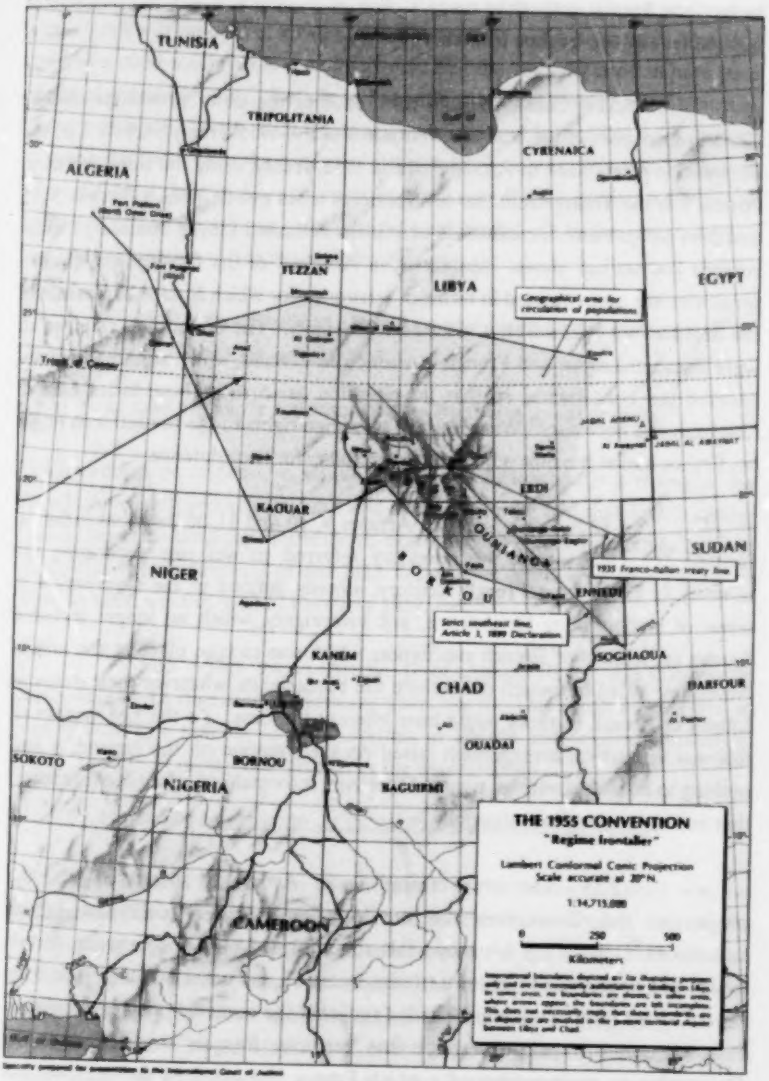
LR 5


VARIOUS BOUNDARY SCENARIOS BETWEEN POINT 1010 AND TOUMMO
Lambert Conformal Conic Projection
Scale accurate at 23°N
1:2,070,000
0
25
50
75
100
Kilometers
NIGER
LIBYA
CHAD
Point 1010
Toummo
①
②
③
④
24°
23°
22°
12°
13°
14°
1 Maximum French Claim
2 Trail possibly to be marked
3 Variation proposed by PETROPAR
4 Southern border of the Mangueni Plateau (Boundary claimed by Libya)

Specially prepared for presentation to the International Court of Justice

Source: Quai d'Orsay Archives
LR Exhibit 6.9

LR 6A


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Geographical area for circulation of populations
Tropic of Cancer
JABAL ARKENU
JABAL AL AWEYNAT
ERDI
KAOUAR
OUNIANGA
SUDAN
1935 Franco-Italian treaty line
NIGER
B O R K O U
ENNEDI
Strict southeast line, Article 3, 1899 Declaration
KANEM
SOGHAOUA
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON

THE 1955 CONVENTION
"Regime frontalier"

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

0 250 500
Kilometers

Specially prepared for presentation to the International Court of Justice

In fact, the French authorities made a clear distinction between the question of boundaries and the "régime frontalier"[53].

5.51 Considering, in turn, each of the other provisions said by Chad to form part of the context of Article 3 of the 1955 Treaty, Article 1 of the Convention refers back to Article 3 of the 1955 Treaty, using the same words as Article 5 of the Treaty itself: "sur les frontières telles que définies à l'article 3 ...", and does not presume the existence of a finally delimited Libyan boundary for the reasons just set out above. Moreover, in Article 1 of the Convention, French territories are again defined in terms of territories for which France had assumed the defence, not over which it asserted sovereignty. The boundaries referred to were between Libyan and French territories so defined, which as already noted covered the borderlands, so that no precision as to these boundaries east of Toummo was necessary. Whatever the sovereign rights to the borderlands might be, France had at the time assumed responsibility for their defence.

5.52 There are then Articles 9, 10 and 11 of the Convention to consider[54]. Once again, the boundary referred to was one separating the territory of Libya from French territory, already defined in the Convention in terms of responsibility for defence, not sovereignty, which no longer included Fezzan (at least after French evacuation, which was to take place at the end of November 1956) but which did include the borderlands, whatever their status as Libyan or French territory might have been at the time. As the LM explained, this was a practical arrangement based on the situation on the ground; it had nothing to do with sovereign rights. Moreover, it formalized a "régime frontalier" that had been operating informally.

5.53 The zone created under Article 10 illustrated that the parties to the Convention did not rely on precisely delimited Libyan boundaries[55]. Map LR 6A shows this zone, formed by a line between certain designated points said to lie in "territoire français", and other points in "territoire libyen". It was within this zone (shaded red) that the nomadic peoples circulated. It is necessary to repeat once more that "territoire français" was defined in the Convention to mean territory for which France had assumed the defence, not over which it had sovereignty. What is striking about the zone shown on the map is that it left a great deal of leeway for the delimitation of a boundary. The 1935 line and a strict southeast line under Article 3 of the 1899 declaration have been drawn in red on this map. Both lines fit comfortably within this zone. Almost all of the regions of Tibesti, all of Ounianga and Erdi, and half of Ennedi fell within the zone, for these were the regions of the nomadic peoples. It is evident that the existence of a delimited southern boundary was of little consequence to the definition of and operations within the "régime frontalier"; in fact, these peoples had been circulating within this zone for centuries.

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[53] Ibid.

[54] In this regard, see, LM, paras. 5.542-5.545.

[55] See, LC-M, paras. 5.543-5.545 and Map LC-M 99 appearing there.

5.54 In this regard, there is no basis at all for the statement in the CC-M, referring to the Convention, that:

> "... sa mise en oeuvre supposait que les frontières soient définies[56]."

Chad produces no evidence to support such a conclusion; and it is wrong, as the French diplomatic records establish and as shown by the fact that such a régime concerning cross-boundary movements and commerce had informally been in effect long before Article 3 of the 1955 Treaty took effect - which it should be borne in mind was not until 12 February 1957.

5.55 This leaves Article II of Annex III of the Convention particulière to be discussed, concerning Piste No. 5. This route is described as passing through a number of points starting in Tunisia and descending south to Chad. The CC-M underlines this part of the description:

> "... et pénètre en territoire du Tchad dans la région de Muri Idie."

It is to be noted that it is not "territoire français" but "territoire du Tchad" which is mentioned. But this could not have referred to territory in terms of sovereignty, for Chad was a French colony that was, in turn, a part of the A.E.F, and "territoire du Tchad" was a military term. Furthermore, the description in this Article "in the region of Mouri Idie" is not at all precise, as the map shows (Map LR 7). Is the reference to the "Col. de Mouri Idie" or to "Mouri Idie" itself, far to the south west? There is no indication at all what part of this immense area lay in the "territoire du Tchad". Whether or not it lay in Libyan territory was not relevant to the fact that, being near the Algerian frontier, it was an area over which France

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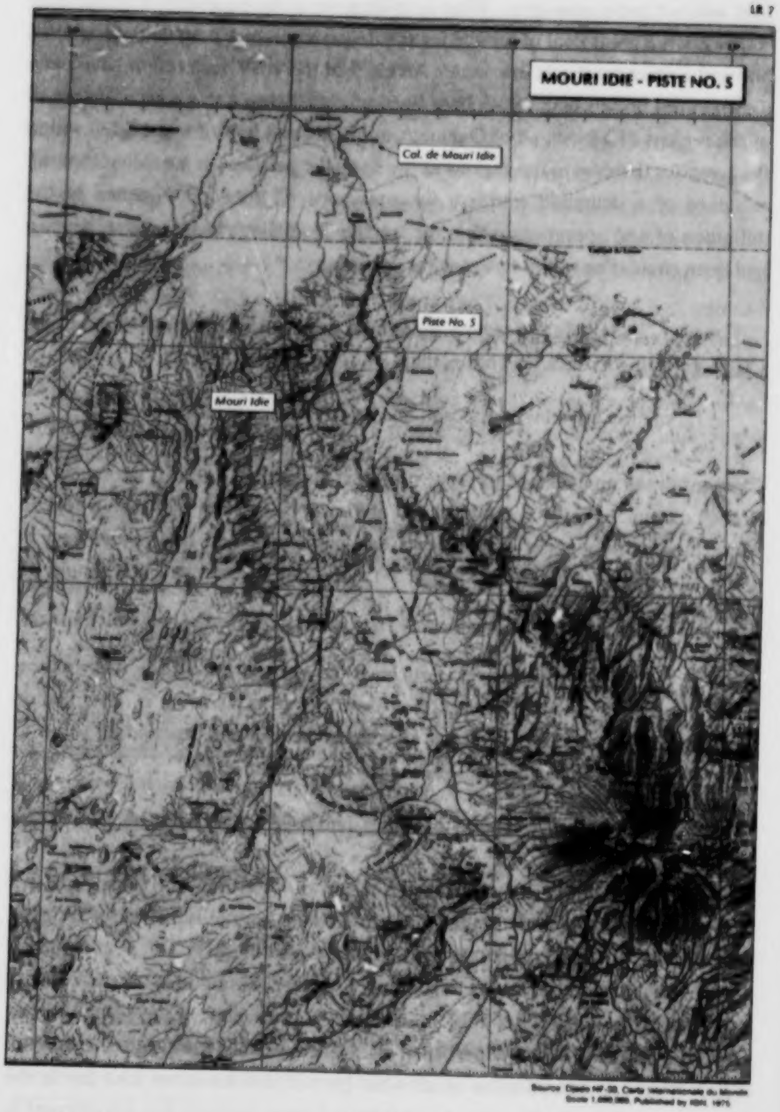
[56] CC-M, para. 11.64.

LR 7


MOURI IDIE - PISTE NO. 5
Col. de Mouri Idie
Piste No. 5
Mouri Idie

Source: Djado NF-33, Carte Internationale du Monde
Scale 1:1,000,000. Published by IGN, 1975

had a special interest in retaining the defence responsibility in 1955, and it fell within the area of responsibility of the military commander of Chad, - in this sense, therefore, "territoire du Tchad". So this brings out again the fact that the "régime frontalier" formalized in the agreements accompanying the 1955 Treaty was a matter quite apart from the question of whether there was a southern boundary and, if so, where it lay.

(c) Other Elements Within the Context of the 1955 Treaty

5.56 The CC-M does not mention a number of other elements of conduct that might be considered as further "context" in interpreting Article 3 of the Treaty. These include the following:

- U.N. maps at the time the Treaty was negotiated and after it was signed;

- Issuance of Libya's Petroleum Regulation No. 1 and Map No. 1 annexed thereto, on 14 August 1955;

- Prime Minister Ben Halim's statement on 14 October 1955 that:

  > "Le traité franco-libyen est un accord d'évacuation pur et simple qui n'engage en rien la Libye.[57]"

  and the French reaction to it;

- The conduct of France in regard to registration of the 1955 and 1956 Treaties under Article 102 of the U.N. Charter;

- The 20-year term of the 1955 Treaty.

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[57] LM, Exhibit 71, p. 5023.

(i) U.N. Maps

5.57 The U.N. maps have already been discussed above[58], so only the remaining elements of the broader "context" will be taken up below.

(ii) Libyan Petroleum Regulation No. 1 and Map No. 1 of 14 August 1955

5.58 Libya's 1955 map is evidence that bears directly on the meaning of Article 3 of the 1955 Treaty, for it was issued only four days after the Treaty was signed. It was an official Libyan map, signed by a Libyan Minister, and it contained no disclaimer as to the international boundaries portrayed[59]. When, in 1978, the Libyan Atlas was issued, it contained a disclaimer as to international boundaries shown; and Libya's southern boundary, shown on the maps in this Atlas, was fairly close to that portrayed in 1955 on Libyan Map No. 1 (Map LR 8).

5.59 In both its Memorial and Counter-Memorial, Libya states that it knew of no evidence to indicate any French protest against Libyan Map No. 1. The CC-M dodges the issue and refers instead to a 1962 geological map prepared by the U.S. Geological Survey showing the position of the United States Government as to the location of Libya's boundaries, which accorded with the French position. The map portrayed "miscellaneous geological investigations" and did not purport to indicate Libya's position as to the international boundaries shown, as the disclaimer at the bottom of the map in bold red type states: "International boundaries as illustrated herein are neither final nor binding on the Libyan Government." No such disclaimer had been placed on Map No. 1, which was the official Libyan map and was so regarded by the international oil companies and other international organisations. However, having examined the files recently made available to Libya by the Quai d'Orsay, Libya has uncovered evidence that France did indeed promptly protest Libya's Map No. 1. It is to be regretted that Chad's Counter-Memorial did not so inform the Court.

5.60 On 25 August 1955, Ambassador Dumarçay sent a note verbale to the Libyan Foreign Ministry protesting Map No. 1, issued eleven days

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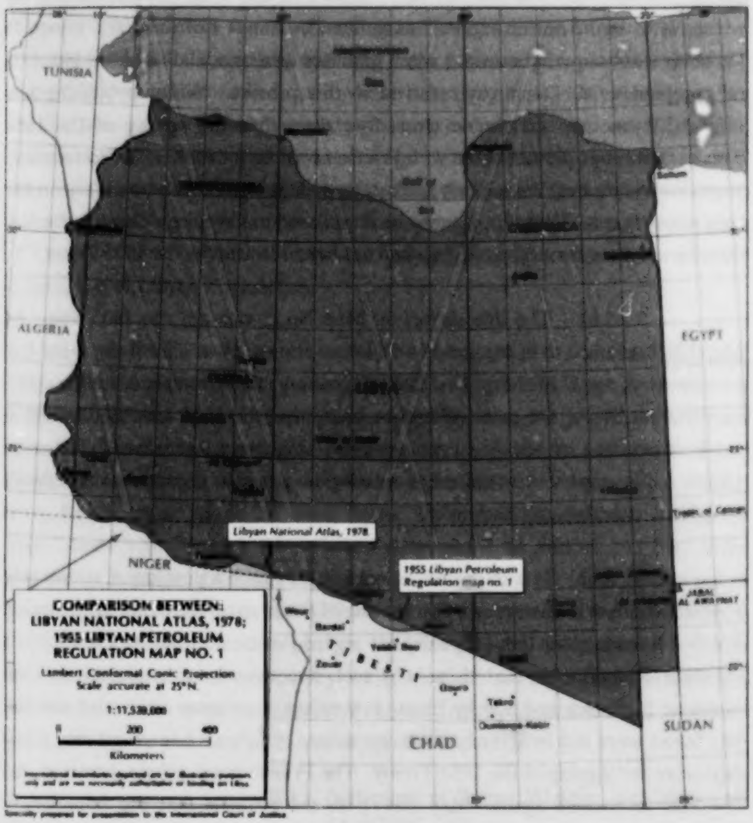
[58] See, para. 4.25, et seq., above. See, also, Supplementary Annex, No. 2, in which Chad's Map Atlas is analysed.

[59] See, LM, para. 5.524, et seq.

LR 8


TUNISIA
ALGERIA
EGYPT
LIBYA
NIGER
CHAD
SUDAN
Salum
Tropic of Cancer
JABAL AL AWAYNAT
Wour
Bardai
Yebbi Bou
Zouar
TIBESTI
Gouro
Tekro
Ounianga Kebir
30°
25°
20°
Libyan National Atlas, 1978
1955 Libyan Petroleum Regulation map no. 1
COMPARISON BETWEEN: LIBYAN NATIONAL ATLAS, 1978; 1955 LIBYAN PETROLEUM REGULATION MAP NO. 1
Lambert Conformal Conic Projection
Scale accurate at 25°N.
1:11,520,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

earlier, because the boundary of Libya shown on the Map did not accord, he wrote, with the "textes en vigueur" as defined in Annex I of the 1955 Treaty[60]. On several subsequent occasions when inquiries were made about Map No. 1 by oil companies, M. Dumarçay referred to this protest. Whilst protesting this official Libyan map that made clear, four days after the signing of the 1950 Treaty, that Libya did not agree with France as to the location of its western and southern boundaries, France only took steps to deal with Libya's boundary on the west with Algeria. Thus, France may be considered to have acquiesced in the fact that the southern boundary of Libya had not been resolved by the 1955 Treaty[61].

5.61 The line shown on Map No. 1 was not the 1935 line. As Map LR 2 referred to in paragraph 4.25 above shows, it was almost the same line as appeared on U.N. Map No. 241 of January 1950, attached to the U.N. Secretariat's Study, the main difference being that the U.N. map had question marks interposed on the line running across southern Libya east of Toummo. Unlike U.N. maps and other maps relating to petroleum concessions, Libya's Map No. 1 contained no disclaimer.

5.62 It is important to explain why such a conclusion concerning France's conduct is warranted. The bearing of this map on the meaning of Article 3 is that it made clear that Libya did not regard Article 3 as having fixed Libya's southern boundary or that there was such a conventional boundary as then espoused by France and now by Chad. France's prompt protest revealed that the two States were not in agreement on the course of Libya's boundary, only a few days after the signing of the 1955 Treaty. The French note verbale, however, did not base its protest against Map No. 1 on the grounds that the boundary it portrayed differed from a boundary allegedly established by Article 3 and Annex

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[60] See, Supplementary Annex, No. 6.10 (5).

[61] Libya does not give the principles of acquiescence and estoppel the major emphasis that Chad does. Nevertheless, Libya does maintain that at several critical moments at least, France's conduct should have prevented France, and should now prevent Chad from arguing that there was a conventional boundary at the time of Libya's independence: for example, (i) when France signed the 1915 Treaty of London and expressed no reservations in respect to the recognition of Italy as successor to Ottoman rights over Libya in its Article 10 (see, para. 6.131, below); (ii) when, in 1935, the French Government in the Exposé des motifs accompanying the law to authorize ratification of the 1935 Treaty informed the French Parliament that there was no such boundary (see, LM, para. 5.336, et seq; LC-M, para. 6.28); and (iii) when, in December, 1950, France voted in favour of Resolution 392(V), calling for negotiation of any undelimited Libyan boundaries - in the circumstances an unmistakable reference to Libya's southern boundary east of Toummo (see, para. 4.16, above).

I. It protested because the line on the map departed from a boundary that allegedly emerged from the "textes en vigueur" as defined in Annex I. It may be presumed that M. Dumarçay, who had been intimately involved in the July-August 1955 negotiations in Tripoli where he was Ambassador at the time (but not the head of the French negotiating team), had cleared the text of this note verbale with the French Ministry of Foreign Affairs before presenting it to the Libyan Government. Thus, in this note verbale, the French Government officially endorsed the interpretation of Article 3 as declaratory of the boundary situation as it existed on the critical date (uti possidetis juris) rather than as itself constitutive of Libya's boundaries.

5.63 A final word on Map No. 1 is appropriate to understand why Libya selected the particular boundary line shown on this map to the east of Toummo. When a State issues a map showing its boundaries, it is incongruous for it to leave certain sectors blank - without any boundary shown. Normally, a choice has to be made, particularly if the map concerns oil concessions (as distinct from Italy's maps issued in 1916, 1926, 1939 and 1941 in the context of negotiations with France). Libya issued Map No. 1 as part of the Petroleum Regulation it promulgated on 14 August 1955. Oil had yet to be discovered in Libya other than in the area of Edjélé on the Libya-Algeria frontier. Libya's 1955 Petroleum Law was issued to provide the ground rules and framework within which concessions to oil companies would be issued. Thus, a conservative line based on the U.N. map that illustrated the uncertainty attached to this boundary was a safe line to pick as a guide to foreign oil companies[62].

(iii) Statement of Prime Minister Ben Halim on 14 October 1955

5.64 Next to be considered, along with the context of the 1955 Treaty and subsequent conduct of the parties, is the reported remark of Prime Minister Ben Halim on 14 October 1955, when he asserted that the Treaty was simply an agreement to evacuate Fezzan "qui n'engage en rien la Libye[63]." This provoked a sharp reaction from such astute critics of the 1955 Treaty as M. Soustelle, Governor General of Algeria; and it was suggested during the French Parliamentary debates that perhaps there was no use considering ratification in the light of the Libyan Prime Minister's statement, taken by these French critics to mean that the Treaty had already been violated. If Mr. Ben Halim had believed that Article 3 had fixed Libya's boundaries, it seems implausible he would have made such a statement. M. Soustelle's remarks during the French Parliamentary debates also made it very clear that he did not regard Article 3 as having adequately fixed Libya's boundary with Algeria by a mere reference to the Accord of 12 September 1919[64].

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[62] In LM, para. 5.552, Libya discussed the dilemma that a State faces in issuing oil concession maps when it comes to indicating boundaries, resulting in the tendency that the boundaries shown err on the side of conservatism, usually coupled with a disclaimer, so as to avoid incidents when concessions extend beyond boundaries. The CC-M brushes this aside with this impetuous remark: "La laborieuse explication de la partie libyenne sur la prudence des cartes géologiques n'est guère convaincante" (para. 10.36). It tries to dismiss the fact that Map No. 1 was issued four days after the 1955 Treaty was signed with the irrelevant observation that its preparation had occurred before signature. As far as Libya was concerned, the principles to govern delimitation of its boundaries were agreed in January 1955 and the Article 3 formulation was only a restatement of that agreement.

(iv) Failure to Register the 1955 Treaty Under Article 102 of the U.N. Charter

5.65 The next item appropriately considered along with the context of the 1955 Treaty concerns the failure to register it under Article 102 of the U.N. Charter[65]. There are a number of documents in the archives of the Quai d'Orsay recently made available to Libya that complete this story[66]. In fact, the story differs from what Libya had previously understood on the basis of only fragmentary information. The CM and CC-M make no attempt to set out the full facts. The full and accurate story recounted by the French diplomatic files has an important bearing on the meaning of Article 3 of the 1955 Treaty.

5.66 The matter of registration of the 1955 Treaty under Article 102 was not raised within the French Government until October 1961 - over six years after signature and four and one-half years after the Treaty was ratified. In contrast, the 1956 Agreement signed in December 1956 was registered under Article 102 on 19 May 1958 even though the 1956 Agreement had not been presented by the Libyan Government to its Parliament for ratification.

5.67 It was the French Foreign Ministry's Service Juridique that asked in October 1961 whether any reasons of a political nature stood in the way of proceeding with registration. Apparently none were perceived, for on 20 June 1962 instructions were sent from the Quai d'Orsay to the French Mission at the U.N. to take the necessary steps, which occurred on 3 July 1962. On 20 July, the U.N. Secretariat pointed out that a required document was missing: a declaration that the texts submitted included any existing reservations to the treaty. It was at this point that a problem arose: there had been two secret letters accompanying the Treaty, and the French Government felt it had to consult Libya before going any further with registration.

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[63] See, LM, para. 5.494; LC-M, para. 3.74, et seq.

[64] See, LM, para. 5.494.

[65] See, LM, para. 5.504, et seq.; LC-M, para. 3.129, et seq.

[66] See, Supplementary Annex, No. 6.8.

5.68 At the end of the day, Libya sent France a note verbale dated 18 February 1963 to the effect that it had no objection to registration in the circumstances. There are, however, two French dispatches of special interest in this file to be noted: the first, dated 29 November 1962, reporting a conversation with Libya's First Secretary in Paris (Mr. Elatrash); the second, a dispatch dated 20 February 1963 from Paris to Tripoli just after Libya's note agreeing to registration had been received. The first document reports that Mr. Elatrash, expressing his personal opinion, did not see why registration was appropriate because certain provisions were "caduc" and a new treaty appeared to him to be preferable. This was, of course, two years after Chad had achieved independence. The second dispatch, the Quai d'Orsay's dispatch of 20 February 1963, expressed surprise over Libya's consent to registration and suggested it might be inopportune then to so proceed:

> "Au moment où la négociation que nous menons avec le Gouvernement libyen vise à remettre en cause en fait, sinon en droit, certaines des obligations que nous avons souscrites dans le Traité, sans contrepartie véritable de la part de ce Gouvernement ... ."

5.69 The file does not reveal why, finally, the French Government took no further action to register the 1955 Treaty. But it is not plausible to believe that such a step would have been so delayed (and ultimately not taken) if France believed that the 1955 Treaty itself had fixed any of Libya's boundaries. On the other hand, if the French Government believed the Treaty only to be declaratory of the boundary status quo on the critical date, it is understandable that it might regard its registration under Article 102 as of no real consequence, unlike the 1956 Agreement which itself specifically rectified the boundary between Libya and Algeria. This is consistent with France's indifference in not following up its protest against Libya's map No.1 in respect to Libya's southern boundary. Moreover, the question of registering the 1955 Treaty first came up only in 1961, after Chad had achieved independence. Libya's southern boundary was no longer a problem for France to resolve; it was a problem to be resolved between Libya and Chad[67].

(v) The 1955 Treaty's 20-Year Term

5.70 It is also a significant element of the 1955 Treaty's context that its Article 11 provided that the Treaty had a duration of only 20 years. It is far more likely that Article 3 was intended to be declaratory in such a situation; for the ultimate boundary would not arise from the 1955 Treaty itself, but from other "actes internationaux en vigueur" on the critical date. Thus, once the ground rules for determining the boundary were agreed, the Treaty itself had no further role to play.

(d) 1966 Libya-Chad Accord

5.71 The CC-M includes the 1966 Libya-Chad Accord as part of the context of Article 3 of the 1955 Treaty. This is clearly not correct under the criteria of Article 31(2) of the 1969 Vienna Convention on the Law of Treaties; nor was it a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions", or "subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation", to quote from Article 31(3) of the same Convention. The parties to the two agreements were not the same. Furthermore, the 1966 Accord, which was part of a package of economic agreements, all signed by the respective Economic Ministers of Libya and Chad, replaced (so far as Chad was concerned) the provisions of the 1955 Convention, not the 1955 Treaty, and thus concerned the "régime frontalier", not the Libya-Chad boundary.

5.72 This difference between the "régime frontalier" and the boundary itself appears clearly in documents in the French diplomatic archives, as has already been discussed above in connection with the 1955 Convention[68]. The excerpts from the 1966 Treaty quoted in the CC-M all relate to the "régime frontalier". Of course, in the 1966 Accord the references in the 1955 Convention to French territory (defined as territory over which France had assured the defence, not in terms of sovereignty) had been replaced by references to Chadian territory or simply to Chad. But the geographical zone described in the 1966 Treaty remained the same as that described in the 1955 Convention, excluding of course Niger and Algeria, as Map LR 6B shows. This left the same flexibility in terms of delimitation of the boundary between Libya and Chad as already noted above in connection with the 1955 Convention[69].

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[67] See, Supplementary Annex, No. 6.7(10).

[68] See, para. 5.48, et seq., above.

5.73 Thus, the 1966 Accord simply replaced the provisions concerning the "régime frontalier" contained in the 1955 Convention. It was not relevant at all to Article 3 of the 1955 Treaty. It is incorrect to say, as the CC-M does, that Articles 2 and 3 of the 1966 Accord:

> "... confirment d'ailleurs la frontière établie par l'article 3 du Traité de 1955[70]."

The 1966 Accord did not indicate, any more than had the 1955 Convention, where the Libya-Chad boundary lay; and it defined the exact same geographical zone as described in the 1955 Convention, within the Libya-Chad borderlands, leaving a good deal of leeway for delimitation of the boundary within this zone.

5.74 The argument that Chad does not advance is that the 1966 Accord established the boundary or limits to the boundary by mutual agreement between Libya and Chad. Such an argument, if it had any basis in fact or law - which it does not - would be more to the point, than trying to fit the 1966 Accord within the "context" of the 1955 Treaty. However, such an interpretation would clearly be inconsistent with the subsequent Treaties between Libya and Chad of 1972 and 1974, with the famous letter of President Tombalbaye of 28 November 1972, and with the subsequent assumption of administration of parts of the borderlands by Libya starting at the end of 1972, provoking no formal protest from Chad for almost five years. The 1972 Treaty made no mention of boundaries even though it was entered into at a time when Libya's activities in the borderlands had begun. The 1974 Protocole d'Accord in effect replaced the "régime frontalier" of the 1966 Accord substituting a more general approach to cross-frontier circulation and policing in what it called the "border areas", implying that the Libya-Chad boundary had not been delimited. These agreements are again taken up in Chapter XI in the context of the post-1951 conduct of Libya and Chad.

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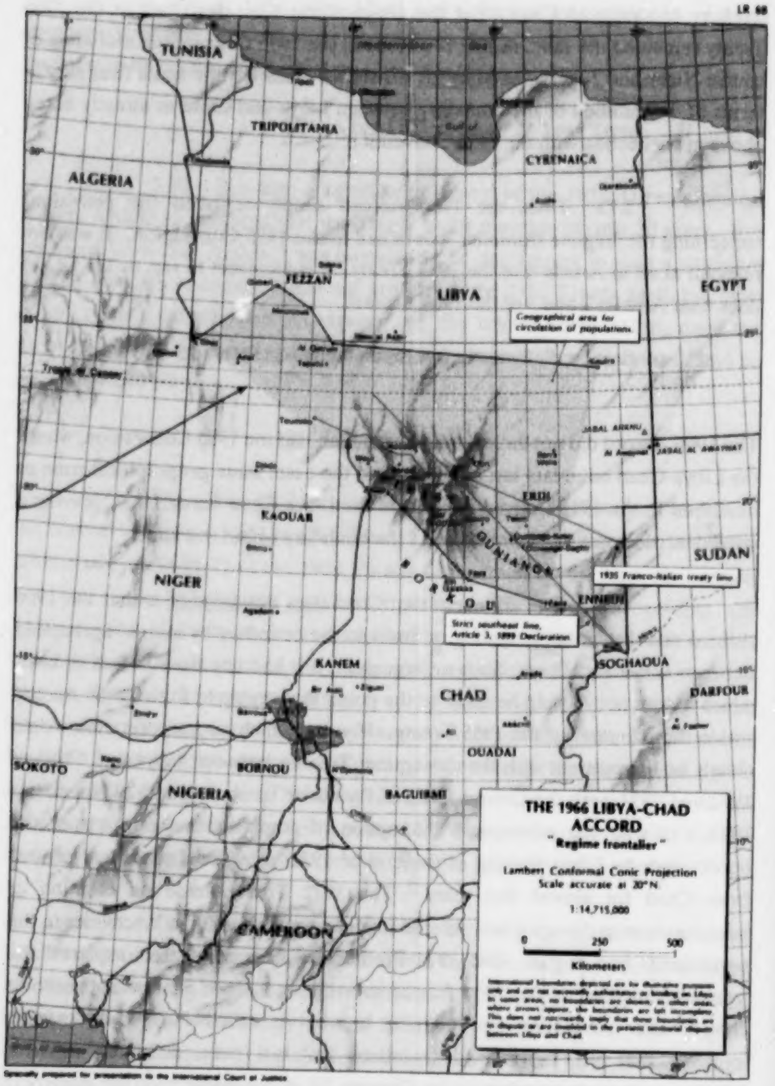
[69] See, para. 5.53, above, and Map LR 6A.

[70] CC-M, para. 11.87.

LR 68


TUNISIA
TRIPOLITANIA
ALGERIA
CYRENAICA
FEZZAN
LIBYA
EGYPT
Geographical area for circulation of populations
JABAL ARKENU
JABAL AL AWAYNAT
ERDI
KAOUAR
OUNIANGA
BORKOU
SUDAN
1935 Franco-Italian treaty line
NIGER
ENNEDI
Strict southeast line, Article 3, 1899 Declaration
KANEM
SOGHAOUA
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
THE 1966 LIBYA-CHAD ACCORD
"Regime frontalier"
Lambert Conformal Conic Projection
Scale accurate at 20° N
1:14,715,000
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250
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Kilometers

Specially prepared for presentation to the International Court of Justice

SECTION 5. Travaux Préparatoires

(a) Preliminary Comments

5.75 The CC-M starts off its discussion of the travaux préparatoires with an obvious misreading of Libya's Memorial, referring to a passage where Libya suggested that Article 3 of the 1955 Treaty was a "reflection of France's confidence in its 'thesis' that a conventional boundary already existed in 1951"[71]. Says the CC-M:

> "Cet extrait du Mémoire libyen est fondamental. En effet, la Libye semble y reconnaître la portée réelle du Traité de 1955 qui refléterait la 'position française' selon laquelle le tracé frontalier est celui résultant des accords de l'époque coloniale."

Article 3 did not reflect France's thesis; it reflected France's confidence in its thesis - misplaced as it may have been -, and this is brought out by the travaux.

5.76 In January 1955, before the long hiatus in the negotiations, Libya and France agreed to the following, as shown in the French draft record:

> "Les deux Gouvernements conviennent de s'en tenir, en ce qui concerne le tracé des frontières ..., aux stipulations générales des textes en vigueur à la date de la création de l'Etat libyen[72]."

This was the agreed basis for taking up the boundary question again when negotiations resumed in July 1955. The January formula was redrafted by the French in July to read:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye, tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annex I)."

This is the text of Article 3; the words are different but the sense is the same as in the agreed formula of January 1955. This is apparent from the plain meaning of Article 3 discussed earlier; and it is confirmed by the travaux.

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[71] CC-M, para. 11.101.

[72] See, LM, paras. 5.457 and 5.472. A copy of the draft minutes of the January meeting has been found in the Quai d'Orsay's archives. See, Supplementary Annex, No.6.4(6).

5.77 France was confident that the application of this formula - a strict application of uti possidetis juris 1951, based on "actes internationaux en vigueur" on the critical date, the date of Libya's independence - would produce the boundary which is now the boundary submitted by Chad to the Court. France was also confident that its thesis (which is now Chad's thesis) as to where the boundary lay, applying these criteria, would be accepted by Libya when it came time to agree the actual line. The travaux and a number of French documents following the signature of the 1955 Treaty demonstrate this.

5.78 Contrary to what is said in the rather convoluted passages of the CC-M based on the above misreading of the LM, Libya's method of interpretation of Article 3 of the 1955 Treaty is in strict accordance with classical rules of treaty interpretation codified in the 1969 Vienna Convention. Earlier paragraphs of this Chapter have summarized what has already been set out in the LM and the LC-M as to the "ordinary meaning to be given the terms of (Article 3 and Annex I) in its context and in the light of its object and purpose". Libya now turns here to the "preparatory work of the treaty, including the circumstances of its conclusion" and other "supplementary means of interpretation", already extensively dealt with in earlier pleadings, but now enriched by documents recently made available by the French Foreign Ministry, to confirm the plain meaning of Article 3.

5.79 Chad appears to believe that the meaning of Article 3 is so clear that recourse to supplementary means of interpretation is unnecessary[73]. Nevertheless, it devotes a number of pages of its CC-M to the travaux préparatoires. Whilst Libya believes that the plain meaning of Article 3 leads to the reading Libya gives to that Article - what the CM, in fact, described as a "consécration d'uti possidetis 1951" -, at the same time, it believes it appropriate to consult the travaux in this case[74]. This is so for several reasons. First, Article 3 is a most unusual delimitation provision. Both the CM and the CC-M have devoted considerable space to an attempt to demonstrate that delimitation by reference to other treaties is a common, well-proven method of delimitation.

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[73] See, CC-M, paras. 11.102-11.110.

[74] Professor Bastid, citing recent jurisprudence, suggests that the use of travaux préparatoires may now play a more prominent role in the interpretation of treaties than it did in the past. See, Bastid, S.:"Effets de Traités entre les Parties", in Les Traités dans la Vie Internationale, Paris, Economica, 1985, pp. 115-141.

None of the examples cited by Chad resemble in the least Article 3[75]. Libya knows of no other treaty containing a delimitation formula such as this. If, as the CM suggests, Article 3 is a "classical" type of delimitation provision, it is so because it is in a class by itself.

5.80 Second, it is difficult to understand why such a round-about formula was chosen if the intention of the parties could have been expressed so much more clearly and simply had they intended to agree upon a specific boundary line: the 1935 line could have been specifically rejected; and the 1899-1919 line and the Toummo-Tropic of Cancer segment of the claimed boundary could have been specifically identified and even drawn on an annexed map. This would have been entirely normal practice. The indirect approach of Article 3 is one of the strongest reasons for rejecting Chad's contention that the 1955 Treaty fixed a line. Nevertheless, such an unusual approach as that of Article 3 warrants consulting supplementary means of interpretation.

5.81 Third, Annex I of the 1955 Treaty, referred to in Article 3, in and of itself, is unclear in terms of what purpose it was intended to serve. Was this list of agreements set out in Annex I intended to be exhaustive? If so, why were such agreements, so critical to the French thesis, as the 1900 Accord, the 1912 Franco-Italian Agreement and the 1924 Protocol and Declaration omitted? Furthermore, it appears that two of the agreements on the list - the 1902 Accord and the Accord of 12 September 1919 - were not "en vigueur" on the critical date. So an investigation of the travaux seems merited to discern the purpose of Annex I.

(b) The CC-M's Incorrect and Inadequate Treatment of the Travaux

5.82 In the summary discussion of travaux that follows, certain remarks set out in the CC-M will be considered first. Then each category of travaux will be dealt with, summarizing the conclusions that emerge from them.

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[75] See, para. 5.22, and fn. 11, and para. 5.39, and fn. 44, above.

5.83 The CC-M contrasts Libya's vigilance in getting French troops to leave Fezzan with Libya's complacency over continued French military occupation and administration of the borderlands[76], considering that:

> "Cette attitude serait incompréhensible si le gouvernement libyen n'avit pas été convaincu de l'existence de la souveraineté française sur le Tibesti."

This conclusion is wrong for it fails to take account of the situation that existed in 1955 and the predicament in which Libya was placed. Libya was then a very weak and poor State. Substantial British and American forces continued to remain in Libya in 1955, and the U.K. had undertaken the responsibility for its defence. (They were not to leave until after 1969.)

5.84 Immediately following the January 1955 negotiations, the Mendès-France Government fell, and the new French Government had serious doubts about continuing the negotiations and agreeing to evacuate Fezzan. The second round of negotiations did not resume until 18 July, and then only after Libya had threatened to take the matter of French occupation of Fezzan to the Security Council. French reluctance to evacuate Fezzan did not end with the signing of the 1955 Treaty on 10 August. While Libya proceeded promptly to submit the Treaty to its Parliament and to ratify it (20 March 1956), the French Government once more had serious second thoughts about the Treaty, even to the point of considering not submitting the Treaty to the French Parliament for ratification, which, in the end, did not occur until early November 1956, less than 30 days before the date set for evacuation of Fezzan under the Treaty[77]. As the price for allowing the 1955 Treaty to go into force by ratifying it (and as a consequence having to withdraw from Fezzan), France exacted additional consideration from Libya: the agreement that the Edjélé oil fields would belong to France[78].

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[76] See, CC-M, paras. 11.114-11.118.

[77] See, Supplementary Annex, No. 6.7.

[78] It may be said in passing that such conduct is a perfect illustration of the kind of behaviour condemned in the 1969 Declaration, adopted at the same time as the Vienna Convention on the Law of Treaties (and annexed to the Convention): the Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties. In that Declaration, the Conference -

> "Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States ...

5.85 In these circumstances, it is not imaginable that the Libyan Government would have insisted that French troops had to evacuate the borderlands as well. In any event, as brought out above in discussing the "régime frontalier" provided for in the 1955 Convention, these were areas for which France had undertaken to guarantee the defence. These military occupations at the time were not manifestations of sovereignty, unless such sovereign rights had already been established. Certainly, while France occupied Fezzan, its occupation was not a manifestation of French sovereignty over Fezzan.

5.86 There is a second point that comes up again in the CC-M. Instead of producing additional travaux from the French archives to fill the conspicuous evidentiary gap that existed - for example, to explain the reasons for the last-minute appearance of the Annex I list, which Chad continues merely to speculate over despite the fact that its case largely depends on it -, the CC-M again harks back to the so-called "Aouzou Incident", as a sort of surrogate travaux[79]. This episode has been dealt with so fully in the LC-M that only a few additional comments need to be made here:

- Chad's account continues to be inaccurate: there were no "excuses" presented by the Libyan Government; the "excuses" of the U.N. were routine and certainly no acknowledgement of French sovereignty; and a contemporaneous account of this episode by the Quai d'Orsay makes no suggestion that any acknowlegement by Libya of French sovereignty was involved[80].

- Chad still fails to note that this was not a military but a civilian mission, - an attempted act of assertion of sovereignty by Libya, repulsed by French military force[81];

Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent ... ."

[79] See, CC-M, paras. 11.119-11.121.

[80] See, Supplementary Annex, No. 7.9.

[81] The Cyrenaican authorities organised the mission in the belief Aouzou was not occupied by the French, a reasonable assumption in the circumstances. See, LC-M, paras. 5.113, et seq.; see, also, Supplementary Annex, No. 7.9.

the withdrawal of the Libyan mission was not the acknowledgment of anything except that there were guns pointed in their faces;

- Chad fails to explain why, if this incident was of such significance, it has introduced no evidence to show that it was mentioned during the July negotiations; Libya has seen no evidence of any kind the French brought up the incident at these meetings;

- New documentary evidence found in the French files shows that this episode was one of a number of similar events during 1954 and 1955, and that the French authorities were anxious that these events not prejudice France's position in the forthcoming negotiations[82]; now Chad tries to convert the so-called "Aouzou incident" into a major event in which Libya allegedly recognised France's sovereignty over Tibesti.

Thus, Libya finds the CC-M's attempt to fit this episode within the Temple of Préah-Vihear case very contrived[83]. Furthermore, it is evident that in February 1955 Libya was not at all anxious to enter into another dispute with the French Government, particularly when the latter had shown that it was very uncertain over whether to resume the 1955 Treaty negotiations.

5.87 The CC-M concedes that the negotiations leading to the 1955 Treaty dealt almost exclusively with the Algerian boundary:

> "Il ne fait pas de doute ... que les négociations relatives à la [sic] frontières ont porté principalement sur le segment séparant la Libye de l'Algérie et du Niger. La France cherchait en effet des garanties pour cette partie de la frontière, comme le montre notamment l'examen de la procédure de ratification du traité[84]."

This statement is most disingenuous. As the French travaux shows, during the ratification process the French goal was to secure Libyan agreement that the

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[82] See, Supplementary Annex, No. 6.5.

[83] See, CC-M, para. 11.120, et seq.

[84] CC-M, para. 11.123.

Edjélé oil fields fell within Algerian (that is French) territory; ratification was specifically tied to achieving that goal - that was the "guarantee" they sought. The 1955 Treaty negotiations concerned, almost exclusively, the attempt to reach agreement on three points through which the Algerian part of the Ghat-Toummo sector would pass, thus rectifying the boundary delimited by the 12 September 1919 Accord, notwithstanding its vagueness. What Chad, in the passage cited above, calls "guarantees" concerned changes in the delimited line, but a clearly defined boundary line did not result from these points being designated in Annex I. A number of questions remained to be resolved before this sector could be definitively fixed. It is misleading to say that the effect of Annex I was to "préciser le sens de la convention de 1919", as the CC-M states[85]: it modified that agreement but without sufficient precision to indicate exactly where the boundary was to be located between Ghat and Toummo[86].

5.88 It is not convincing to argue that, although the sector of Libya's boundary that was almost the sole subject of the negotiations was not settled by Article 3 of the 1955 Treaty, nevertheless the boundary east of Toummo was definitively resolved by a mere reference to "actes internationaux en vigueur" in 1951. Possibly, France assumed that subsequent negotiations on a line would be a pure formality; but that is not at all the same as reaching agreement on Libya's southern boundary.

5.89 Perhaps the most conspicuous gap in the travaux produced by Chad concerns Annex I of the 1955 Treaty. It is clear from the travaux - as Chad has admitted[87] - that the Annex I list of agreements made its appearance at the very end of the negotiations in August. But what was its purpose? Here is the answer which the CC-M comes up with:

> "En revanche, les négociateurs estimèrent insuffisante la référence générale prévue en janvier aux 'textes internationaux en vigueur'. Etait-ce l'incident d'Aozou du 28 février 1958 [sic] qui les conduisirent à changer de méthode? Etait-ce le cours de la négociation? Etait-ce l'inquiétude des services administratifs français, révélée entre autres par la lettre du Gouverneur général de l'A.E.F. qu'analyse largement le Mémoire libyen? ... Toujours est-il que le texte définitivement retenu, loin d'esquiver la difficulté de la définition de la frontière entre la Libye et l'Afrique

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[85] Ibid.

[86] See, para. 5.49, above, and Map LR 5.

[87] See, CM, p. 136, para. 119; see, also, LC-M, para. 3.23, et seq.

> équatoriale française, la résout en précisant le projet initial par l'énumération de l'annexe I[88]."

Faced with one of the critical questions concerning the meaning of Article 3 and Annex I, the CC-M merely speculates, advancing no proof at all. What proof is there that the negotiators in August 1955 considered the January formula ("conviennent de s'en tenir ... aux obligations générales des textes en vigueur à la date de la création de l'Etat libyen") to be insufficient? Insufficient in what sense? What proof is there that the negotiators were led to change the method of delimitation ("à changer de méthode")[89]? It is astounding that such an important question could be treated in such an off-hand way.

5.90 This question concerning Annex I has been discussed above[90]. There it is suggested that it was intended to be no more than a handy, though defective, list to which to refer when the actual delimitation of Libya's southern boundary was undertaken in accordance with the agreed criteria set out in Article 3 of the 1955 Treaty. The very fact that Chad has not produced evidence concerning either the appearance or purpose of Annex I confirms the conclusion that it could not have been intended to play a substantive role. There is not a shred of evidence to suggest that Annex I was intended to change the ground rules agreed in January and to substitute an entirely new method, as Chad now suggests for the first time in the CC-M.

5.91 In its Memorial, Libya produced a document that bears directly on this question: the letter of 2 May 1955 from the Governor General of the A.E.F. to the Ministre de la France d'Outre Mer[91]. It will be recalled that in this letter, sent to Paris between the two sets of negotiations, the Governor

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[88] CC-M, para. 11.126.

[89] In the same paragraph, reference is made to the CM, pp. 109-110, which concerned the criticisms of the Governor General of Algeria, M. Soustelle, as well as of the Ministers of Interior and Defence. These criticisms were made after the Treaty was signed, not while the negotiations were going on, unlike the letter of the Governor General of the A.E.F. dated 2 May 1955.

[90] See, paras 5.30-5.33, above.

[91] See, LM, para. 5.437, et seq.; LC-M, paras. 3.42-3.43. The Governor General of the A.E.F. was only concerned with the part of the boundary to the east of Toummo (or more precisely east of point 1010 just west of Toummo), in other words with Libya's southern boundary.

General urged that the boundary question be handled "avec la plus grande prudence" and that any discussion of the boundary lines be avoided:

> "Il semble que cette question ne devrait être évoquée dans les accords que pour poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen."

5.92 The *CC-M* seeks to minimize the importance of this document[92]: it was just the point of view of a "chef de service", "un fonctionnaire francais"; "un instrument somme toute mineure"; other "services français" had equally strong views that were different; the A.E.F.'s advice was not followed, etc. The French *travaux*, only recently made available to Libya, confirms the fact that the A.E.F.'s advice *was* followed, and that it represented the thinking of the French Government when negotiations resumed in July as reflected, *inter alia*, in instructions given to the French team[93]. The views of the other French services referred to by Chad, expressing dismay that France had not rectified that boundary more in the 1955 Treaty, not only were expressed *after* the signing of the Treaty[94], but also concerned only the Libya-Algeria boundary. These "virulent" criticisms made their mark and led to the 1956 Agreement rectifying the Algerian boundary between Ghadamès and Ghat. But they did not concern Libya's southern boundary and had nothing to do with the advice of the Governor General of the A.E.F..

5.93 Contrary to the impression given by the *CC-M*, the Governor General was not a low-level official out in the field sending in messages to Paris that were ignored; he was among the most knowledgeable persons concerning the boundary between Libya and the A.E.F., and his offices in Brazzaville were the acknowledged centers of practical experience and informed study on this matter. His advice was extremely influential and indeed it was followed in this case by the Ministre de la France d'Outre Mer. The Quai d'Orsay's archives contain an interesting exchange between the Ministre de la France d'Outre Mer and the Ministre des Affaires Etrangères of 20 and 23 July

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[92] *See*, *CC-M*, paras. 11.126 and 11.130.

[93] *See*, *Supplementary Annex*, No. 6.6. *See*, also, *Supplementary Annex*, No. 6.5(2) for a summary of the A.E.F. dispatch of 10 February 1955.

[94] *See*, fn. 89, above.

1955 just after the July negotiations had started[95]. A meeting of the interested Ministries had been held in Paris shortly before to assemble maps and other data in preparation for the negotiations. The Ministre de la France d'Outre Mer had not been invited to attend, and his letter reveals that he was not happy over this as well as concerned that perhaps French policy had been changed without his knowledge. His 20 July letter expressed in strong terms his hope that the ground rules concerning the boundary negotiations had not been modified, and he set forth what he believed them to be[96]. The Ministre des Affaires Etrangères (Direction Générale des Affaires Politiques) promptly replied, assuring his colleague that the guidelines the latter had set out in his letter of 20 July were to be carefully followed and that they accorded with the instructions given to the French team, which he described in this way:

> "J'ai l'honneur de vous confirmer ... que les instructions données à notre Délégation lui prescrivent de baser son attitude, dans la discussion de la délimitation des frontières franco-libyennes, sur les textes internationaux en vigueur au moment où a été proclamée l'indépendance libyenne (24 Décembre 1951), c'est-à-dire la déclaration franco-britannique du 21 mars 1899, admise par l'Italie le 1er novembre 1902 (échange de lettres Barrère-Prinetti) et interprétée par la Convention franco-britannique du 8 septembre 1919, ainsi que les accords franco-italiens du 12 septembre 1919."

This was essentially the formula agreed in January, with the addition of a list of agreements said to have been in force on the critical date. In fact, this list was to become the Annex I list, to which the 1898 and the 1910 Conventions were added.

5.94 There was also reflected in this exchange the fact that it was intended that representatives of the A.E.F. and A.O.F. be sent to Tripoli to be on hand to advise the French negotiating team. It is clear from this exchange and from other documents, both during and after the negotiations, that the January formula, which was essentially what the A.E.F. had urged, was being strictly followed and that there was to be no discussion of a southern boundary line, which would be left to a later phase. The 23 July letter also made a clear distinction between boundary questions and the "régime frontalier".

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[95] See, Supplementary Annex, No. 6.6 (13 and 14).

[96] "J'entends m'en tenir aux dispositions des accords franco-italiens de 1919 et de la déclaration franco-britannique de 1899, et ne saurais admettre que la définition de la frontière franco-libyenne puisse être remise en discussion."

5.95 The CC-M misses the point when it suggests that Libya's thesis is that the travaux show that a clear distinction was intended to be made between Libya's boundary with the Libya-Algeria boundary and Libya's southern boundary: the former to be delimited immediately, the latter to be left to future negotiations. This is not Libya's thesis; and the evidence shows something quite different: the Algerian boundary between Ghadamès and Ghat, as delimited by the Accord of 12 September 1919, was not touched by the 1955 Treaty; it was left for rectification in 1956 as a condition of ratifying the 1955 Treaty. The fixing of that boundary was thus postponed. The Algerian boundary between Ghat and Toummo - over which virtually all of the negotiations in July-August 1955 were concerned - was not definitively fixed, but by designating three points through which that sector of the boundary should pass, France secured Libya's agreement to a rectification of the 1919 delimitation. Its final delimitation was also left for future negotiations. As to Libya's southern boundary east of Toummo, it was recognised to be whatever boundary resulted from "actes internationaux en vigueur" on the critical date. Agreement on a line was left to the future. This is precisely what the A.E.F. letter of 2 May 1955 proposed and what the travaux (the 23 July letter just discussed) show to have been the instructions given to the French team.

5.96 The CC-M cites the Gorse Report to the Assemblée Nationale of March 1955 as representing the approach followed by the French Government in the negotiations[97]. M. Gorse was a member of the French Parliament not the French Government. His strong recommendation that Libya's southern boundary should be settled definitively once and for all - an approach calling for France to put all of its cards on the table during the negotiations - was not followed; these were not the instructions of the French Government, as just shown.

5.97 Thus, the parties to the 1955 Treaty, for different reasons, reached the same conclusion concerning the delimitation of Libya's boundary east of Toummo. They both wanted to postpone the fixing of the line.

5.98 The absence in the travaux of any explanation for the reason why Annex I made its appearance, can only be taken to mean that it was not intended to change the basic ground rules already agreed on in January, and expressed in different words in Article 3. For any change of such importance would certainly have been the subject of discussion, and the record of the meetings would have revealed this.

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[97] The exact same citation from the Gorse Report may be found in LM, para. 5.435.

(c) Additional Travaux from the French Diplomatic Archives

5.99 The LC-M pointed out that the travaux relating to the July-August negotiations produced by Chad were very sparse and that Libya had not been given equal access to the French archives, prompting the sending of a note verbale to the French Government[98]. To fill the gap, Libya supplied documents from the British Foreign Office files that are of considerable value in understanding what took place as well as concerning the intentions of the parties. Libya also produced a considerable amount of material consisting of its own unilateral record of the negotiations.

5.100 The French Foreign Ministry has been most cooperative and courteous in responding to Libya's request for access to the files relating to the 1955 Treaty. A substantial number of relevant travaux and similar documentary evidence providing a supplementary means of interpretation have been found in the French files and are annexed here, broken down into 11 annexes according to subject matter. A summary description of these documents and their significance is found at Supplementary Annex, No. 6.

5.101 It is surprising that the CC-M criticises Libya for not producing Libyan travaux, when Libya in fact produced considerably more documentary evidence than Chad regarding the July-August negotiations, supplemented by important British "travaux", which if anything may have more value than what could be seen, in some cases, as self-serving documents prepared by the parties to the negotiations. Libya was taken aback that the CC-M could make the statement set out below, when it can hardly be doubted that counsel preparing Chad's pleadings were fully aware of Libya's note verbale to the French Government[99]:

> "Il (Chad) note par ailleurs que la partie libyenne n'a pas utilisé les archives importantes du ministère français des Affaires étrangères,

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[98] See, LC-M, p. 19, fn. 37; see, generally, LC-M, paras. 3.19-3.87.

[99] In fact, the statement itself reveals Chad's awareness of Libya's request to the French Government.

> dont les éléments essentiels - aux yeux de la République du Tchad - ont été fournis en annexe au Mémoire tchadien. Il ne doute pas que la partie libyenne révisera son argumentation à la lumière de ces informations complémentaires mises à la disposition des deux parties et se réserve de discuter l'argumentation libyenne contenue dans le Contre-Mémoire[100]."

5.102 Chad suggests here that the French travaux that Chad produced and the travaux that Libya would come upon in the Quai d'Orsay's archives would cause Libya to modify the line of argument of its case. Quite to the contrary, this documentary evidence has strengthened Libya's case. However, Chad seems to be playing a waiting game, holding back information until it sees what Libya discovers. These files have been open to Chad from the very beginning; its failure to produce important documents and relevant travaux that were in the files apparently was deliberate. Libya would like to make it perfectly clear that it will vigorously oppose any attempt of Chad to introduce additional documentary evidence after the submission of the Replies in this case. Chad had a duty, just like Libya, to supply the Court with all relevant documentary information having a significant bearing on this case in its written pleadings, and it has had every opportunity to do so.

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[100] CC-M, para. 11.113.

CHAPTER VI. THE BOUNDARY STATUS QUO ON THE CRITICAL DATE AS RECOGNISED IN ACCORDANCE WITH THE CRITERIA OF ARTICLE 3 OF THE 1955 TREATY

SECTION 1. Introduction

6.01 As just demonstrated in Chapter V above, Article 3 of the 1955 Treaty expressed the agreement of Libya and France to recognise and abide by the boundary situation as it existed on the critical date, the date of Libya's independence, that is to say to recognise the boundaries separating their respective territories that were binding on them on that date and that resulted from "actes internationaux" then "en vigueur". It is necessary, therefore, to examine the various international acts and agreements that might have produced a boundary binding on Libya and France in the part of Libya's frontier that now lies between Libya and Chad. Although for purposes of interpreting Article 3 in the previous Chapter, all of the Libyan boundaries were relevant - for Article 3 was not just restricted to the frontier now lying between Libya and Chad but covered all of Libya's frontiers with France or French colonial possessions - once Article 3 has been interpreted as not intended to change the boundary status quo as it existed on the critical date - except for the three points designated in Annex I, which do not concern the Libya-Chad boundary - the other boundaries can be set aside. They are not at issue in the present case.

6.02 Chad claims that the situation as to the boundary on the critical date was that two boundary lines between Libya and Chad were binding under conventional international law on Libya and France as a result of "actes internationaux en vigueur" on that date: a straight line connecting Toummo and the intersection of 16°E and the Tropic of Cancer; and another straight line connecting that intersection point with the intersection of 24°E and 19°30'N. Article 3 specifically required that the international agreements establishing such boundaries be "en vigueur" on the critical date. Thus, in order to support its claims to these two lines, Chad must establish that they were boundaries that bound both Italy and France as a result of "actes internationaux en vigueur" on the date of Libya's independence, when Libya inherited from Italy the boundaries relating to its territories.

6.03 Paragraph 11.20 of the CC-M is directly relevant here. For Chad admits there, in the course of examining the text of Article 3, that:

> "La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur à l'indépendance de la Libye."

Chad finds in the Article's text a double limitation; first:

> "... sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales ... .";

and second:

> "... d'autre part, les actes internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendance libyenne."

Libya agrees with both these statements of Chad, which have already been discussed above[1].

6.04 The first limitation imposed by Article 3 excludes per tabulas the possibility that the boundaries could result from colonial effectivités (which might, for example, consist of "actes administratifs internes"), whether Italian or French. In Article 3, the parties agreed to recognise a boundary, not a line, that emerged from "actes internationaux en vigueur" - a boundary binding on Libya and France resulting only from such "actes", without reference to colonial effectivités[2]. The "actes" had to produce a boundary; and they had to be opposable to Libya and France on the critical date.

6.05 The second limitation excludes boundaries resulting from "actes" that were not "en vigueur" on the critical date.

6.06 The CC-M then suggests that there was a third limitation imposed by Article 3 as a result of Annex I and the "actes internationaux" appearing on the list. For Chad contends that the list was an exhaustive one:

> "Sont donc exclus tous les actes internationaux en vigueur le 24 décembre 1951 mais non repris dans la liste annexée à l'article 3[3]."

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[1] See, paras.4.07 - 4.08, above.

[2] As discussed in LC-M, para. 5.112, France was particularly concerned to rule out the possibility that Italian military operations at the start of World War II might be considered as relevant effectivités. Article 3 was a confirmation of uti possidetis juris 1951, and ruled out uti possidetis de facto. Certainly Chad's third theory, based as it is entirely on French effectivités producing the boundary rather than "actes internationaux", is entirely incompatible with Article 3.

[3] CC-M, para. 11.20.

Libya has shown that the list could not have been intended to be exhaustive and that the conduct of both France and Chad reveal that it was not so intended[4]. And there is the further problem that at least two of the "actes" on the Annex I list were not "en vigueur" on the critical date - the 1902 Accord and the Accord of 12 September 1919 both between Italy and France - as Chad has admitted and has established by evidence produced by it[5]. For all the reasons given earlier in this Reply, the Annex I list must be regarded as having been no more than a tentative, incomplete and incorrect listing of the agreements that the parties to the Treaty should consult to determine what, if any, boundary binding on Libya and France was produced by them. Thus, the third limitation suggested by Chad must be rejected[6].

6.07 However, this point of difference does not affect the question whether a conventional boundary between what is now Libya and Chad existed on the critical date. In its Memorial and Counter-Memorial, Libya scrutinized all the international agreements of any possible relevance to this territorial dispute, whether or not on the Annex I list or "en vigueur" on the critical date. What this comprehensive review shows is that even if the "en vigueur" limitation of Article 3 were ignored - which of course cannot be done - and even if the "actes" examined were restricted to those on the Annex I list, no conventional boundary would emerge that was opposable to Italy and France and, hence, inherited by Libya on the critical date (and in 1960, by Chad, as successor to France).

6.08 Libya continues here the same approach of examining all possibly relevant "actes internationaux" below; however, since these various agreements were extensively dealt with in Libya's two prior pleadings, the analysis that follows will be relatively conclusory, aimed principally at bringing out differences between the Parties that the CC-M makes apparent.

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[4] See, LM, para. 5.474, et seq.; and LC-M, para. 3.12, et seq., and 4.09 (where 11 possibly relevant agreements are listed that fail to appear on the list). Of particular note among the agreements not on the list, because of Chad's heavy reliance on them, nevertheless, to establish the boundary it claims, are the 1900 Accord and the 1912 Agreement between Italy and France, as well as the 1924 Protocol and Declaration between Great Britain and France.

[5] See, CM, pp. 122-123, para. 81.

[6] It is incongruous that the four principal agreements between Italy and France, which would be expected to be the most relevant, the 1900-1902 Accords, the Accord of 12 September 1919 and the 1935 Treaty, were all ruled out by Article 3, for none were "en vigueur" on the critical date.

SECTION 2. 1899 Declaration

6.09 The Annex I list included the 1898 Anglo-French Convention, to which the 1899 Declaration was added, both having been signed and ratified together; but the 1898 Convention produced no boundary relevant to Libya's boundaries with France or French territories on the critical date[7].

6.10 The 1899 Declaration is one of the critical links in Chad's case. Libya's first two pleadings have established two related facts concerning this agreement that Chad seems not to comprehend:

- North of 15°N latitude, the Declaration did not produce a boundary of any kind, nor was it any sort of delimitation, even of British and French zones of influence[8];
- The southeast line described in Article 3 of the Declaration was no more than a limit to French expansion ("in the negative sense", as Lord Salisbury wrote)[9].

It is important to grasp these two points because Chad, by assuming (wrongly) that the 1899 Declaration involved a delimitation of the areas north of 15°N latitude - albeit admitting that it was not then a boundary delimitation but one of spheres of influence (British and French) - then tries to upgrade this alleged delimitation, by virtue of the 1902 Accord and French colonial effectivités, into a boundary delimitation. A basic flaw in Chad's argument is that the starting premise is wrong: the 1899 Declaration north of 15°N did not delimit anything. Great Britain, as the 1899 travaux show so clearly, deliberately avoided any recognition of a French zone, contrary to what Chad maintains, and it did not seek or receive recognition of any British zone. So no delimitation between French and British zones could even have been contemplated[10].

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[7] The inclusion of the 1898 Convention shows that each of the "actes" on the Annex I list did not necessarily produce a boundary in the area of the Libya-Chad borderlands or between Libya and French territory or colonies.

[8] See, e.g. LM, para. 5.58, et seq.; LC-M, paras. 4.72 and 4.211. In para. 8.08, the CC-M wrongly asserts that Libya does not contest that the "actes" listed in Annex I were treaties of delimitation. This is absolutely incorrect. The 1899 Declaration was not a treaty of delimitation as to territories north of 15°N, dealt with in Article 3 of the Declaration - the only territories covered by the Declaration that are of concern in this case. As will be seen further on, the 1902 Accord had nothing to do with any kind of delimitation; it referred to no boundary, other than the notional Tripolitanian boundary; and the parties to the Accord had no standing to fix any boundaries of relevance to this case.

[9] See, LM, para. 5.60.

6.11 Then there is the critically important point for Chad's case as to the direction of the line intended by Article 3 of the 1899 Declaration[11]. The CC-M continues to advance the patently wrong proposition, first advanced in the CM, that three quite different lines - the 1899 line (a true southeast line intersecting 24°E at approximately 15°35'N), the line shown on the map - the 1899 Livre jaune map - the map referred to in the 1902 Accord (east-southeast intersecting 24°E at 19°N), and the 1899 line as "interpreted" in the Convention of 8 September 1919 (east-southeast intersecting 24°E at 19°30'N) - are in fact the same line:

> "... il ressort tant des travaux préparatoires à la Déclaration de 1899 que de ses suites que la limite décidée alors a été consacrée en 1919 et correspond à celle figurant sur la carte à laquelle se réfère l'échange de lettres franco-italien de 1902[12]."

The LC-M has illustrated the difference between the various lines on a number of maps[13]; these maps, which are reproduced again in this Reply at paragraph 6.141 (Maps LR 20A; 20B and 20C), show that the choice of line could affect the allocation of thousands of square kilometres of the borderlands.

6.12 Article 3 of the 1899 Declaration describes a line that starts from the intersection of 16°E with the Tropic of Cancer and runs "thence to the south-east" until it "meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed". Libya sees no ambiguity or obscurity in this description; certainly the ordinary meaning of "to the south-east" is not to the east-southeast. Nor does the interpretation that a true southeast line was intended lead to an absurd or unreasonable result. In fact, such a line carried out the object and purpose of Article 3, which was to limit France's expansion toward the Nile north of 15°N but to leave on the southwest side of the line the regions of Borkou, Tibesti, Ounianga, Ennedi and Soghaoua. On the maps available at the time that were used by the negotiators, a strict southeast line carried out this purpose, and an east-southeast line would have fallen several hundred kilometres too far to the north of such features as the Tibesti *massif* and, thus, would have been unreasonable and contrary to the intention of the parties. This was fully demonstrated in the *LC-M*[14]. These 1890s-vintage maps were produced by Chad with the *CM*, but apparently Chad failed to examine them with care or to grasp their significance.

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[10] The entire line of argument set out in CC-M, paras. 8.11-8.22, is thus misdirected. Great Britain wanted to agree on a line with France to limit France's expansionist aims eastward toward the Nile, aims that shortly before had led to the Fachoda crisis.

[11] In discussing this matter, the CC-M once again mis-states what Libya said in the LM. The Parties are not in accord that the 1899 line was a delimitation of zones of influence north of 15°N latitude. In CC-M, para. 8.84, Chad distorts paras. 5.26 and 5.38 of the LM; for example, the words delimitation and limitation quite clearly do not mean the same thing.

[12] CC-M, para. 8.83.

[13] See, e.g., Maps LC-M 19, 20, 21 and 24.

6.13 Chad's discussion of the *travaux* of the 1899 Declaration in the *CC-M* is as incomplete and defective as in the *CM*. Chad continues to use the *travaux* to try to *refute* the plain meaning of Article 3 of the 1899 Declaration, contrary to the interpretative rules of Article 32 of the Vienna Convention, under which *travaux* may be invoked only to perform a *confirmative* function. Chad tries to play down the importance of the line of 15°N latitude. For example, it says that the Parties are in agreement that 15°N was first mentioned only during the negotiations on 19 March 1899, citing paragraph 5.41 of the *LM*. No such statement appears in that paragraph. As paragraph 4.33 of the *LC-M* shows, as early as 16 February, the line of 15°N latitude appeared in a *French* draft submitted by M. Cambon. The line of 15°N latitude is a fundamental element in this case: it marked the northern end of the southern sector of Article 2, which *did* concern a boundary delimitation, and the southern end of the Article 3 sector, which *did not* concern a boundary at all. Lord Salisbury referred specifically to areas north of 15°N latitude when he reassured the Ottoman Empire and Italy that the 1899 Declaration had not affected their rights or aspirations north of that line.

6.14 The *CC-M* reflects Chad's continued misunderstanding of what so clearly appears from the documents concerning the episode of 19 March 1899 (what the *CC-M* calls "cet épisode crucial"[15]). It will be recalled that Ambassador Cambon rejected Lord Salisbury's draft that day, which would have had the Article 2 sector end (and the Article 3 sector start) at 18°N, rather than at 15°N (as in M. Cambon's draft of 16 February). The *LC-M* demonstrated that

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[14] *See*, *LC-M*, para. 4.71, *et seq*., and *Maps LC-M* 22, 23 and 24.

[15] *CC-M*, para. 8.99.

Lord Salisbury's proposal would have deprived France of areas north of Darfour that it felt should lie on the French side[16]. The CC-M correctly gives this as the reason for M. Cambon's refusal. Where Chad is mistaken is in its interpretation of what then transpired. This mistake occurs because the CC-M's analysis is based on an incomplete set of the documents in the British and French archives. A detailed analysis of the documents bearing on this question, and of Chad's mistakes, may be found in Supplementary Annex, No. 4, hereto. As this analysis shows, the CC-M ignores the 19 and 20 March drafts that revealed that the end point of the Article 2 sector, ultimately agreed upon, reverted to 15°N.

6.15 It was at that moment in the negotiations that the first of two important changes were made: the direction of the Article 3 southeast line was reversed in the description given it in that Article. Rather than starting at 15°N and ascending northwest to the intersection point on the Tropic of Cancer, the line descended southeast from that point. The reason for this reversal in direction is apparent, as the LC-M has explained[17]. The only point that could be fixed was the intersection of 16°E and the Tropic of Cancer, which in the earlier drafts prior to 19 March had been its end point. However, a starting point on the southeastern end of the line could not be precisely identified since the Article 2 sector north of 11°N had not yet been delimited, although it was intended, of course, that one sector would end where the other began (Map LR 9). Since, as a practical matter, it is the starting point of a line that needs to be exactly identified, the direction of its description in Article 3 was reversed on 19 March. Instead of indicating as the starting point of this line the point where it intersected 24°E - which could not be precisely identified until the Article 2 sector had been delimited - Article 3 described it as the end point. The starting point became the Tropic of Cancer (and 16°E), the line running "thence to the south-east" - and such a line, that is an approximately strict southeast line, would have intersected 24°E at approximately 15°35'N.

6.16 At the same time, a second change was made. The line of longitude which the descending southeast line was to intersect was moved east from 23°E to 24°E. This also is shown on Map LR 9.

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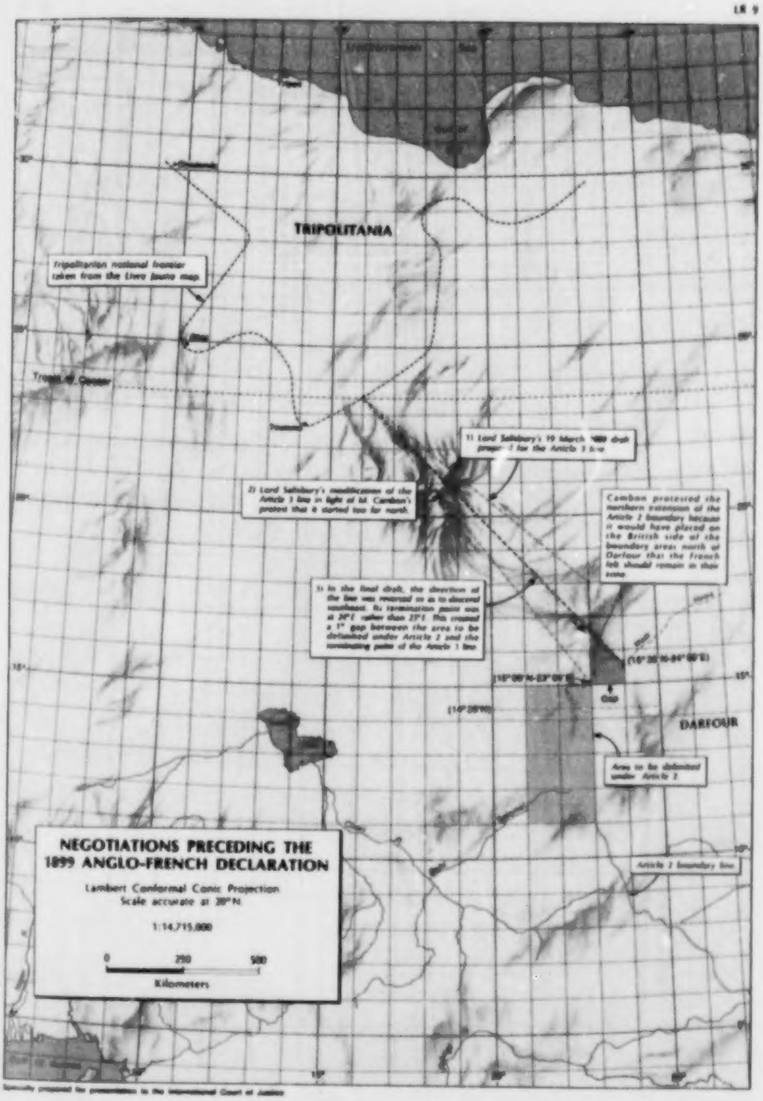
[16] See, Maps LC-M 16, 31A and 31B.

[17] See, LC-M, para. 4.184.

LR 9


Mediterranean Sea
Gulf of Sirte
TRIPOLITANIA
Tropic of Cancer
(15°00'N-23°00'E)
(15°35'N-24°00'E)
(14°20'N)
Gap
DARFOUR
Gulf of Guinea
30°
25°
20°
15°
10°
5°
10°
15°
20°
25°

Tripolitanian national frontier taken from the Livre Jaune map

1) Lord Salisbury's 19 March 1899 draft proposal for the Article 3 line

2) Lord Salisbury's modification of the Article 3 line in light of M. Cambon's protest that it started too far north

Cambon protested the northern extension of the Article 2 boundary because it would have placed on the British side of the boundary areas north of Darfour that the French felt should remain in their zone

3) In the final draft, the direction of the line was reversed so as to descend southeast. Its termination point was at 24°E rather than 23°E. This created a 1° gap between the area to be delimited under Article 2 and the terminating point of the Article 3 line.

Area to be delimited under Article 2

Article 2 boundary line

NEGOTIATIONS PRECEDING THE 1899 ANGLO-FRENCH DECLARATION

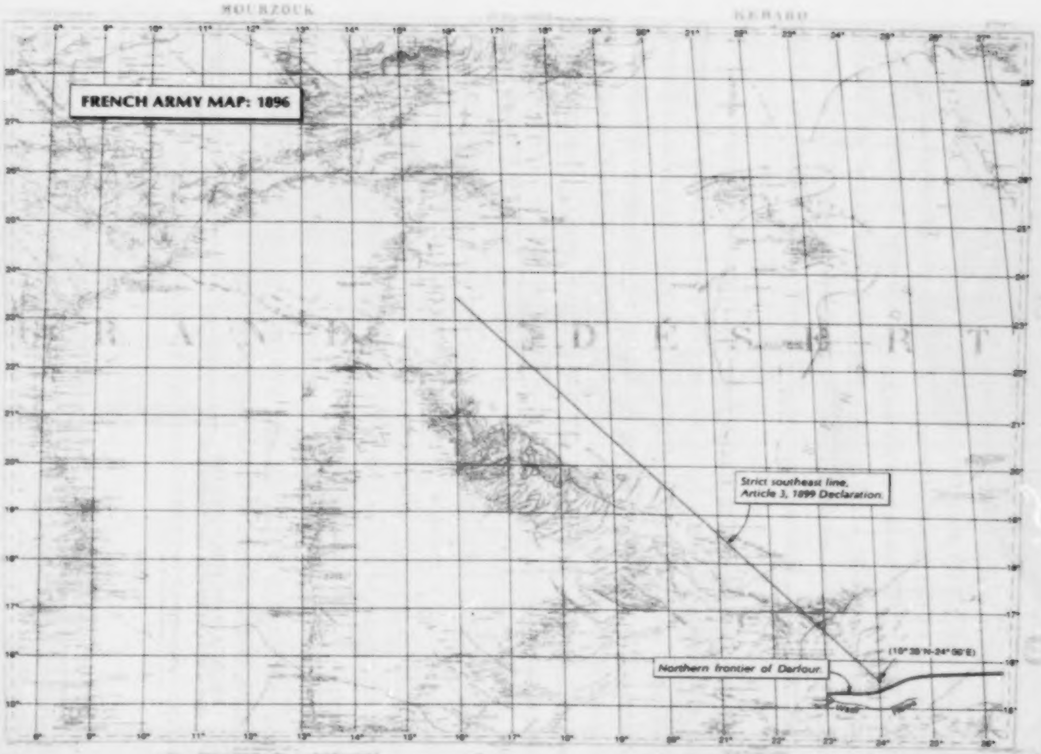
Lambert Conformal Conic Projection
Scale accurate at 20°N

1:14,715,000

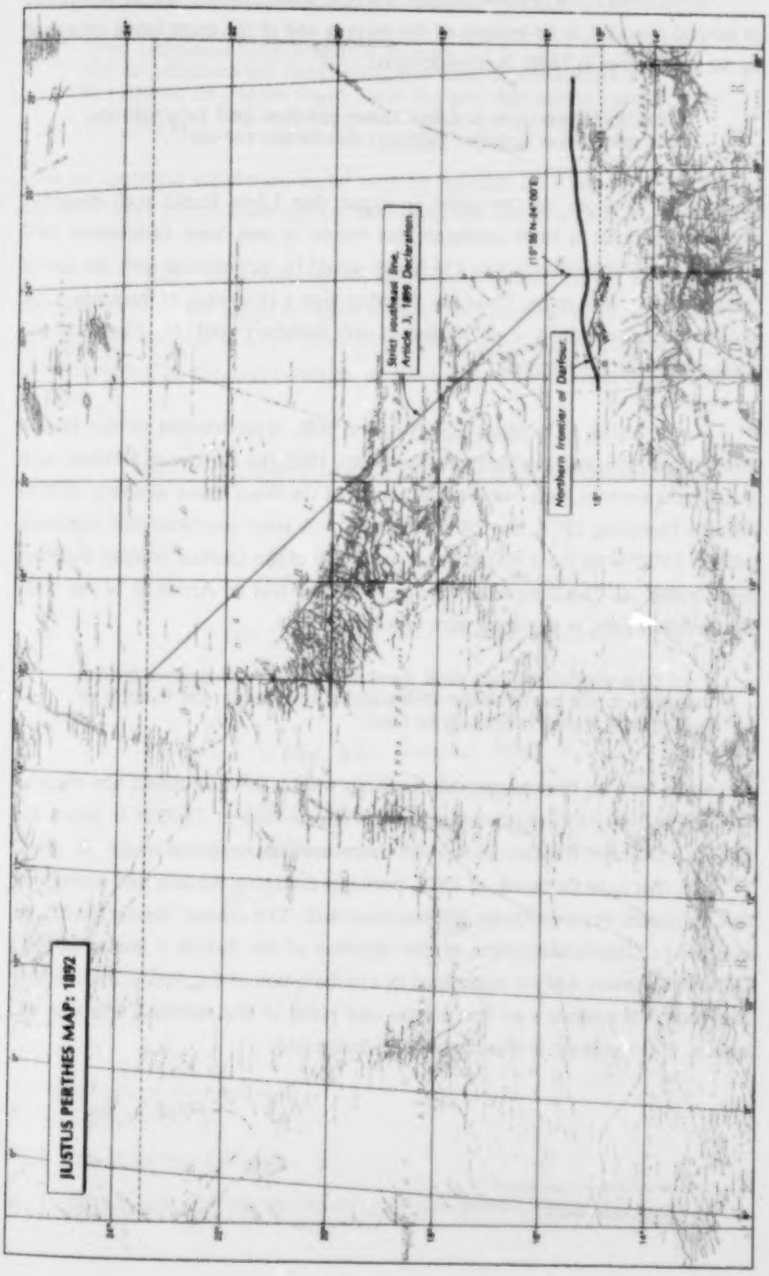
0 250 500
Kilometers

Specially prepared for presentation to the International Court of Justice

LR 10A


FRENCH ARMY MAP: 1896
MOURZOUK
KEBABO
GRAND DESERT
Strict southeast line,
Article 3, 1899 Declaration.
Northern frontier of Darfour.
(15°35'N-24°00'E)
Wadi Howa

LX-108


JUSTUS PERTHES MAP: 1892
Strict southeast line, Article 3, 1899 Declaration
(19°30'N-24°00'E)
Northern frontier of Darfour

6.17 It is in connection with the above that the CC-M makes one of several mistakes in its analysis of the travaux and of the maps being consulted by the negotiators in 1899. It remarks that:

> "Il est révélateur que la Libye doive préciser qu'il ne s'agit que d'une orientation 'presque' (almost) exactement sud-est[18]."

The CC-M pounces on this point to argue that Libya found such flexibility necessary because a strict southeast line would, it says, have intersected 24°E south of the Darfour boundary and hence would be inconsistent with the text of Article 3. But once more, Chad has failed to take a close look at the maps it has produced, maps which it is evident Lord Salisbury and M. Cambon had themselves closely examined.

6.18 On Maps LR 10A and 10B, reproductions of the French Army map, 1896, and the Justus Perthes map, 1892, the frontier of Darfour, as it was then conceived, runs east/west just north of the Wadi Howa at about 15°20'N latitude (between 23° E and 24°E longitude). A strict southeast line intersects 24°E at 15°35'N on these maps, that is just north of the Darfour frontier line (not to its south, as Chad mistakenly suggests). The text of Article 3 of the 1899 Declaration reads, in pertinent part, as follows:

> "... (the southeast line) shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed."

As can be seen on these maps, this is exactly what a strict southeast line does: as the line follows 24°E southward from the intersection at 15°35'N it meets the notional Darfour frontier shown on these contemporaneous maps at about 15°20'N, that is to the north of 15°N, perfectly matching the text and confirming that an almost strict southeast line was intended. The reason "almost" had to be inserted in Libya's description of the direction of the Article 3 line is that the Darfour boundary had yet to be fixed in a delimitation of the Article 2 sector that had been left undone - so the precise end point of the Article 3 line was not known. If it had been, it could have been designated.

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[18] CC-M, para. 8.109.

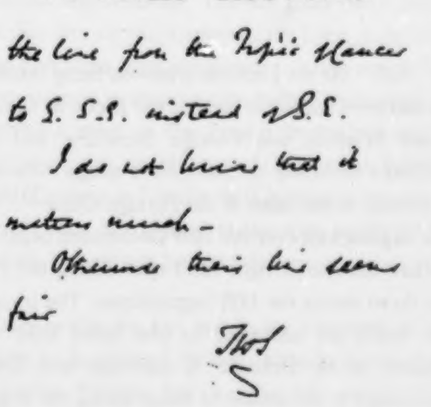
6.19 Thus, the CC-M, once again, is wrong when it declares:

> **"Non seulement l'interprétation avancée par la Libye est contraire aux intentions claires des parties, mais encore, elle aboutit à priver la mention du 24ème degré - que la ligne doit suivre 'jusqu'à sa rencontre (...) avec la frontière du Darfour' - de tout effet utile[19]."**

Such an incorrect conclusion could only be reached as a result of not having examined all of the evidence and not having studied carefully the relevant maps.

6.20 In examining the subsequent conduct of the parties to the 1899 Declaration, the CC-M commits what are two unpardonable offenses. One concerns the reaction of Lord Sanderson to the Non-Annexed Map in a note to Lord Salisbury[20]; the other relates to the subsequently-issued official British maps[21].

6.21 The note of Lord Sanderson is again reproduced below:



The French have drawn
the line from the Tropic of Cancer
to S. S.E. instead of S.E.
I do not know that it
matters much –
Otherwise their line seems
fair
THS

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[19] CC-M, para. 8.112.

[20] See, LC-M, para. 4.60, et seq.

[21] See, LM, para. 5.182 and Map No. 63; LC-M, para. 4.18 and Maps LC-M 14A and 14B.

It is a conclusive piece of evidence, for it establishes that when the British negotiatiors saw the map annexed to the Livre jaune text of the 1899 Declaration they immediately perceived that the direction of the Article 3 line was incorrectly drawn: it followed an east-southeast, instead of a southeast, direction. In the part of the CC-M where Chad attempts to establish that the Livre jaune map (the Non-Annexed Map) confirmed the line described in Article 3 of the 1899 Declaration, Chad refers to this handwritten note of Lord Sanderson and brushes it aside. Describing Lord Salisbury as the principle negotiator ("presque exclusif"), the CC-M says the following:

> "Son attention a été attirée sur ce qu'une personne qui n'avait pas suivi les négociations, comme Lord SANDERSON, pouvait trouver étrange dans l'orientation de la ligne tracée sur la carte par comparaison avec le texte même de la Déclaration. Malgré cela, Lord SALISBURY n'a pas réagi[22]".

6.32 The shocking aspect of Chad's reaction to this evidence is the off-hand way in which the CC-M falsifies the facts - facts that appear from a mere glance at the travaux of the 1899 negotiations and that a modicum of research would have made evident to those who prepared Chad's Counter-Memorial.

6.33 As the Fachoda crisis was being resolved in the fall of 1898, M. Cambon had been named to succeed the Baron de Courcel as Ambassador in London; Lord Salisbury was Foreign Secretary; and Lord Sanderson was Permanent Under-Secretary of State for Foreign Affairs, in other words the senior civil servant at the head of the Foreigh Office[23]. Shortly after the crisis subsided, the negotiations over the 1899 Declaration began. Lord Sanderson had worked as Lord Salisbury's right hand man during the Fachoda crisis, and he continued to do so during the 1899 negotiations. The travaux reflect his detailed involvement: drafts are addressed to him rather than to Lord Salisbury; M. Cambon reports to M. Delcassé of meetings with Lord Sanderson. Lord Sanderson was right in the middle of things during the negotiations leading up to the 1899 Declaration.

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[22] CC-M, para. 8.133. By inadvertence, an error in the numbering of paragraphs has been made. The next paragraph after para. 6.21 is para. 6.32. Cross-references are not affected.

[23] See, Histoire de l'Administration Française, Tome II, 1870-1980, Paris, Editions du Centre National de la Recherche Scientifique, 1984, p. 238. See, Exhibits LR 3 and 4, Foreign Office Lists for 1899 and 1901.

6.34 What the Sanderson-Salisbury note shows is that Lord Sanderson, "cette personne", as Chad casually says, spotted a mistake in the intended direction of the Article 3 line on the Livre jaune map and called it to Lord Salisbury's attention. No one was more qualified to know it was a mistake than Lord Sanderson. Contrary to what the CC-M says, Lord Salisbury did react: he placed his initial ("S") on the message, which under the practice of the British Foreign Office at the time meant that he had read the note and had no comment to make. Under the same practice, had he disagreed, he would have commented, particularly as to the direction of a line over which a good deal of time had been expended during the negotiations just ended. So it can be taken as certain that he shared the same view as Lord Sanderson: the line shown on the French Livre jaune map did not follow the direction intended by Article 3 - it was an east-southeast rather than a southeast line.

6.35 The CC-M tries to build an argument out of the alleged absence of any reaction from Lord Salisbury. It is argued that if he had agreed with Lord Sanderson - as his initial at the bottom of the note shows that, in fact, he did - he would have made a fuss. But even Lord Sanderson in his note did not take the error in the French map seriously: "I do not know that it matters much". Why not? It is evident that they correctly assessed the Livre jaune map attached unilaterally by the French as of no legal significance. It was not an agreed map; and in the face of British attemps to annex a map to the Declaration, France had strongly opposed annexing a map; so the French themselves could not have considered this map as having any significance. In fact, when Foreign Minister Delcassé passed on to M. Cambon in London the Livre jaune version of the 1899 Declaration together with map, he referred to the map as "indicative"[24]. No doubt, M. Cambon's failure to react was for much the same reasons as the British.

6.36 There is also the fact that in the aftermath of the Fachoda crisis, Great Britain had so humiliated France (already in the throes of the Dreyfus Affair) that Queen Victoria had to intercede with Lord Salisbury, according to official French sources, "d'aider les Français à sortir de cette horrible impasse[25]". This was hardly the moment to create another new incident over a trivial, illustrative map.

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[24] See, CM, pp. 161 and 163, para. 75, and Annex 57; see, also, LC-M, para. 4.59.

[25] Histoire de l'Administration Française, op. cit., p. 238.

6.37 The second unpardonable offense committed by the CC-M here concerns how Great Britain interpreted the Article 3 line on its own official maps. The LM contains a reproduction of the official British War Office map of 1916, a larger colour version of which was furnished to the Court[26]. The line shown is a strict southeast line. Since that time, Libya has found the 1906 (revised to August 1913) and 1914 Official British War Office maps to which reference had been made in the documents covering the Italian protests to the 1919 "interpretation" of the 1899 line. These were attached to the LC-M[27]. Yet in the collection of 162 maps in the CC-M's Map Atlas, none of these British maps appear[28]. If such important maps as these were omitted from the Atlas, what purpose was the Atlas intended to serve?

6.38 The reaction of Lord Sanderson and Lord Salisbury is thus confirmed by maps subsequently issued by the British Government. There is no doubt that the intended direction of the Article 3 line was, as the text stated, southeast so as to intersect 24°E close to where the Article 2 boundary, still to be delimited, was likely to end[29]. Such a line carried out the aim and purpose of the parties in the light of their knowledge of the geography of the region as portrayed on the maps which they had before them.

6.39 One final point about the 1899 Declaration is that it mentioned neither Tripolitania nor its boundaries. The Declaration provided no basis at all for the Toummo-Tropic of Cancer segment of the boundary now claimed by Chad. It is pure fantasy for Chad to suggest the following concerning the 1899 Declaration, trying to draw a parallel with the Burkina Faso/Mali case:

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[26] See, LM, Map No. 63.

[27] Maps LC-M 14A and 14B.

[28] Similarly, none of the important Italian maps appear in Chad's Map Atlas. See, e.g., Maps LC-M, 52, 53 and 54 and Map LR 16A-1. See, also, Supplementary Annex, No. 2, hereto, containing a critique by Libya of this Atlas.

[29] In the 19 March draft of Salisbury proposing that the line start at 18°N, the direction of the line (before it was reversed) was expressed "dans la direction à peu près du nord-ouest", not "to the northwest", reflecting the fact that it was approaching north-northwest rather than northwest. The Livre jaune map line was even less a northwest/southeast line since its end point was at 19°N not 18°N.

> "... les Etats parties à l'accord de 1899 ont constaté que la frontière du Vilayet de Tripoli s'étendait jusqu'à ce point (the intersection of 16°E with the Tropic of Cancer)[30]."

There is no support at all in the 1899 Declaration for any segment of a boundary *to the west* of the starting point of the southeast line.

6.40 The following conclusions may, therefore, be drawn concerning the 1899 Declaration and whether it produced a boundary binding on Italy and France (and thus on Libya and Chad) which Libya and France would have recognised under Article 3 of the 1955 Treaty[31]:

- The 1899 Declaration concerned no delimitation at all, even of zones of influence, north of 15°N, and, *a fortiori*, produced no boundary there;

- The direction of the Article 3 line was intended to be strict southeast, subject, possibly, to a slight variation depending on the Article 2 delimitation not yet accomplished;

- No map was annexed to the Declaration; and the map annexed to its text as published by the French in the *Livre jaune* showed the Article 3 line incorrectly; but, in any event, this map was not intended to be more than illustrative;

- The British Government officially declared its view that the direction of the Article 3 line was strict southeast in maps published by it dated 1906 (revised to 1913), 1914 and 1916;

- The 1899 Declaration provided no basis for a boundary between Toummo and the Tropic of Cancer.

6.41 The *CC-M* skips over the Ottoman Empire's protests to the 1899 Declaration and the British Government's responses. Similarly, it gives no attention to the British explanation to Italy in 1899 as to the meaning of the 1899 Declaration. Great Britain made it very clear to both the Ottoman Empire and

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[30] *CC-M*, para. 8.166.

[31] Chad has produced no evidence to show that the 1899 Declaration was "en vigueur" on the critical date.

Italy that no delimitation was involved, that no boundary of any kind resulted and that, in any event, the agreement expressed in the Declaration was between Great Britain and France and, thus, in accordance with the principle res inter alios acta, did not and could not affect Ottoman rights or potential Italian interests. This point was stressed by the German notes verbales of 3 May and 16 July 1899, as paragraphs 5.56 and 5.57 of the LM bring out.

SECTION 3. The 1900-1902 Accords

6.42 The CC-M contends that the 1900-1902 Accords resulted in making opposable to Italy the alleged delimitation between the Tropic of Cancer and 24°E, said to have been fixed in 1899 - and to have undergone no modification since - and to have been recognised by Great Britain as a delimitation of zones of influence, a delimitation which, by virtue of French effectivités, became transformed into "une véritable frontière internationale"[32]. This is so, Chad contends, because in these Accords Italy recognised a French zone of influence up to the Tripolitanian boundary shown on the map referred to in the 1902 Accord (the Non-Annexed Map).

6.43 The 1902 Accord also determined the sector of the boundary between Toummo and the Tropic of Cancer, according to Chad:

> "... du même coup, s'est trouvé déterminé le secteur de la frontière allant de Toummo au Tropique de Cancer, qui lui aussi figure sur la carte acceptée par l'Italie comme fixant les frontières de la Tripolitaine[33]".

Thus, magically, these Accords had two critical results: the southeast line, allegedly transformed into a boundary well after 1902, became opposable to Italy; and the Toummo-Tropic of Cancer segment became fixed as a boundary accepted by Italy.

6.44 The importance to France's claim (and now to Chad's case) of the 1900-1902 Accords, and the map referred to in the latter, as annexed to the

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[32] CC-M, para. 8.170.

[33] Ibid. Note the unsupportable allegation that Italy at the time accepted the map as fixing Tripolitania's boundaries. The map was referred to in the 1902 Accord in order to make more precise the limits of French expansion vis-à-vis Tripolitania-Cyrenaica set out in the 1900 Accord; the wavy, dashed line encircling "Tripolitaine" on the map is not identified as a boundary in the map's legend. See, para. 6.54, below.

1899 Declaration, can hardly be overstated. Hence, the fact that the 1900 Accord was carelessly omitted from the Annex I list[34], and the fact that neither it nor the 1902 Accord were en vigueur on the critical date, deal a mortal blow to Chad's case entirely aside from other weaknesses and defects.

6.45 In discussing the 1900 Accord[35], the CC-M reveals Chad's sensitivity to the fact that the Accord consisted of two unilateral declarations, neither statement confirming the other. The declaration of relevance here was that of French Ambassador Barrère. If it is accepted for purposes of discussion that this Accord fits within the Article 3 category of "actes internationaux" - by no means a foregone conclusion - then the ordinary meaning of this French declaration must first be considered. In his letter M. Barrère assured Signor Visconti-Venosta that the 1899 Declaration:

> "... en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli, marque pour la sphère d'influence française, par rapport à la Tripolitaine-Cyrénaïque, une limite que le Gouvernement de la République n'a pas l'intention de dépasser ... ."

He added to this an assurance concerning the caravan routes from Tripoli:

> "... et qu'il n'entre pas dans ses projets d'intercepter les communications caravanières de Tripoli vers les régions visées par la susdite convention[36]."

6.46 As has been brought out earlier, to describe the effect of the 1899 Declaration north of 15°N latitude as a "partage d'influence" was an exaggeration, which the British made clear at the time they were not in agreement with. The ordinary meaning of the first extract of the Accord quoted above is that (i) the 1899 Declaration had excluded and not dealt with the vilayet of Tripoli; (ii) but that its exclusion meant that France considered the vilayet as a limit it did not intend to exceed[37]. The purpose and intent of this part of the Accord was to

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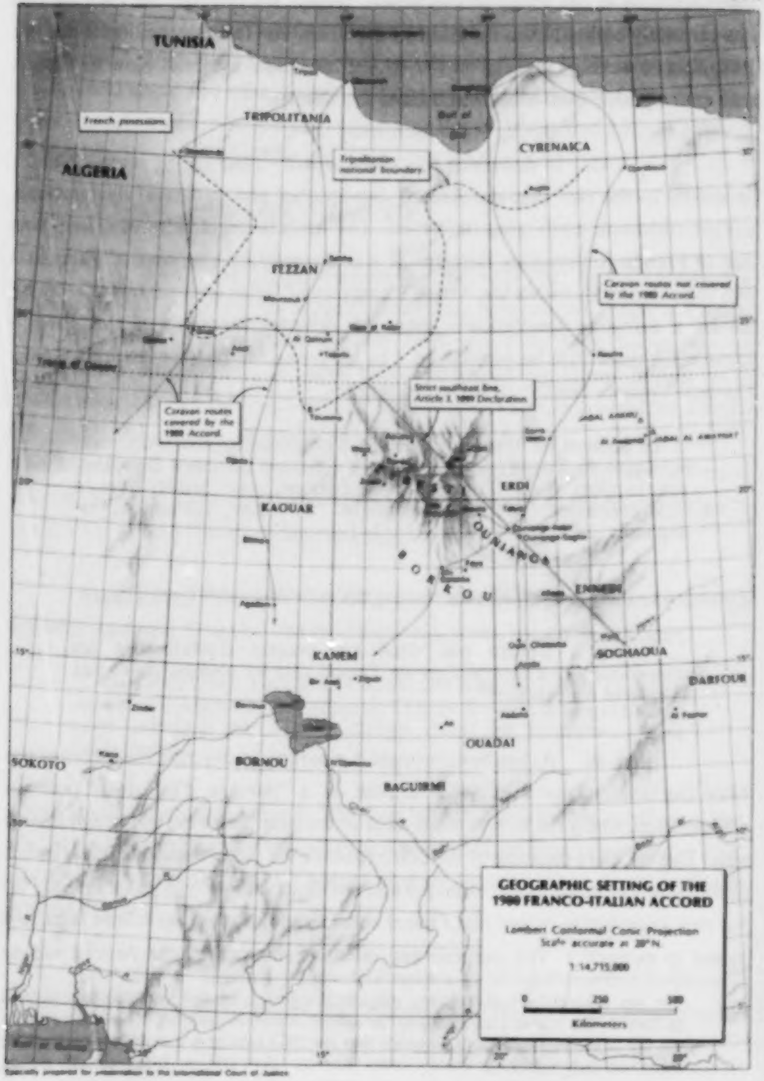
[34] The two Accords have always been considered together, for one modified and clarified the other. The Annex I list mentions "les accords franco-italiens du 1er novembre 1902"; the use of the plural "accords" suggests that the 1900 Accord was carelessly omitted for there was only one 1902 Franco-Italian Accord. See, CM, p. 156, para. 88, for an embarrassed attempt to explain away this mistake.

[35] The 1900 Accord is discussed in LM, para. 5.67, et seq., and LC-M para. 4.73, et seq.

[36] See, LM, French Archives Annex, p. 91.

[37] Chad argues that the phrase "en laissant en dehors du partage d'influence qu'elle sanctionne", included at the request of Signor Visconti-Venosta, constituted Italy's

LR 11


TUNISIA
French possessions
TRIPOLITANIA
ALGERIA
Tripolitanian notional boundary
Gulf of Sirt
CYRENAICA
FEZZAN
Caravan routes not covered by the 1900 Accord
Tropic of Cancer
Caravan routes covered by the 1900 Accord
Strict southeast line, Article 3, 1899 Declaration
ERDI
KAOUAR
OUNIANGA
BORKOU
ENNEDI
KANEM
SOGHAOUA
DARFOUR
SOKOTO
BORNOU
OUADAI
BAGUIRMI
15°
20°
GEOGRAPHIC SETTING OF THE 1900 FRANCO-ITALIAN ACCORD
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,715,000
0
250
500
Kilometers

Specially prepared for presentation to the International Court of Justice

assure Italy that France had no designs on Tripolitania-Cyrenaica. As the passage concerning caravan routes shows - for it dealt only with the caravan routes from Tripoli, and not with the important eastern routes running south from Benghazi (Map LR 11) - the focus of the 1900 Accord was entirely on the western side of Tripolitania where it bordered French territories; and this was precisely what Signor Prinetti said in his veiled reference to the secret 1900 Accord during a speech to the Italian Parliament in 1901, the text of which had laboriously been coordinated word-for-word with the French[38].

6.47 It is evident, bearing in mind the criteria of Article 3 of the 1955 Treaty, that the 1900 Accord resulted in no boundary - it did not even refer to a boundary. If, indeed, it could be fitted within the description of "actes internationaux", it did not appear on the Annex I list; and not having been notified by France under Article 44 of the 1947 Italian Peace Treaty it was not en vigueur on the critical date. So it is not clear on what basis Chad believes it is relevant to the resolution of the present territorial dispute[39].

6.48 The 1902 Accord was the result of two other factors[40]. In Signor Visconti-Venosta's unilateral statement in his letter that was a part of the 1900 Accord, he dealt with French interests in Morocco and Italian interests in Tripolitania. It was an unequal arrangement, however: France was to have a free hand to pursue its interest in Morocco, and if (but only if) the existing Moroccan situation should be altered, Italy would then have the right to develop its influence in respect of Tripolitania-Cyrenaica. Italy sought to correct this imbalance in a more reciprocal arrangement. The second factor concerned Italy's membership in the Triple Alliance. France sought certain assurances in regard to the alliance between Italy, Germany and Austria. As a rather subsidiary matter, the Italians wanted to make more specific the unilateral undertaking of M.

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recognition of the object of the 1899 Declaration and thus waived a defense of res inter alios acta in respect of the Declaration so far as Italy was concerned. Among the many holes in this argument, it must be asked by what extraordinary feat of magic an alleged interpretation, rejected by Great Britain, but contained in a unilateral French statement could be turned into the adherence by Italy to the 1899 Declaration?

[38] See, discussion of Prinetti Declaration, LM, para. 5.74, et seq.; LC-M para. 4.85, et seq., and Map LC-M 27. Signor Prinetti had just succeeded Signor Visconti-Venosta as Italian Foreign Minister.

[39] See, LC-M, p. 152, fn. 109, where it is pointed out that in CM, p. 168, paras. 94-95, Chad concedes that the 1900 Accord was not a boundary delimitation treaty.

[40] The 1902 Accord is discussed at LM, para. 5.83, et seq., and LC-M, para. 4.73, et seq.

Barrère in 1900, for, as Libya has explained and illustrated in detail, the frontier of Tripolitania had never been defined, which left France's declaration concerning the limits to its expansion too vaguely worded for the Italians[41].

6.49 Turning to the form of the 1902 Accord and the ordinary meaning of its text, it was clearly bilateral and incontestably fell within the ambit of "actes internationaux" referred to in Article 3 of the 1955 Treaty. It was also on the Annex I list. But for the same reason set out above as to the 1900 Accord, it was not en vigueur on the critical date. The remaining questions required to be answered by Article 3 are, did the 1902 Accord produce or result in a boundary, and was any such boundary opposable to Libya on the critical date?

6.50 It is the first two paragraphs of this Accord that are pertinent here. The first paragraph, whose text appears in the footnote below[42], refers to earlier conversations between the two Powers concerning their reciprocal rights in the Mediterranean: Italy as to Tripolitania-Cyrenaica; France as to Morocco. From these conversations, it says, it was concluded to be opportune "de préciser les engagements" resulting from the exchange of letters constituting the 1900 Accord. This precision was aimed at the following:

> "... en ce sens que chacune des deux puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées ... ." (Emphasis added).

The words underlined in this passage were underlined in the CC-M, where Chad proceeds to criticise Libya for having ignored this part of the 1902 Accord. The CC-M reaches the following conclusion as to this passage:

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[41] See, LM, paras. 5.70 and 5.93-5.95, and Map No. 49.

[42] The first paragraph, in pertinent part, reads as follows:

> "A la suite des conversations que nous avons eues touchant la situation réciproque de l'Italie et de la France dans le bassin méditerranéen, et touchant plus spécialement les intérêts respectifs des deux nations en Tripolitaine-Cyrénaique et au Maroc, il nous a paru opportun de préciser les engagements qui résultent des lettres échangées à ce sujet entre Votre Excellence et le Marquis VISCONTI VENOSTA, les 14 at 16 décembre 1900, en ce sens que chacune des deux Puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées ...". Emphasis added in CC-M, para. 8.37.

> "Cela signifie que la France reconnaît à l'Italie une sphère d'influence en Tripolitaine, dans les limites qui sont précisées à la phrase suivante.[43]"

The reference by Chad to "la phrase suivante" was to the second paragraph of the Accord. The CC-M reflects a misreading of the last word of the first paragraph to be "sousmentionées" (mentioned below) instead of "susmentionées" (mentioned above).

6.51 Chad's interpretation is completely wrong. The quoted text merely redressed the imbalance of the 1900 Accord by no longer making Italy's right to "développer éventuellement son influence par rapport à la Tripolitaine Cyrénaique"[44] dependent on a change in the situation in Morocco. In other words, the only part of the text that merits underlining is "librement". Moreover, Chad ignores the fact that Tripolitania in 1902 was under Ottoman sovereignty. France could have recognised no more than a potential Italian influence over this Ottoman territory.

6.52 Returning again to the 1902 Accord, its second paragraph is set out below:

> "Il a été expliqué à cette occasion que par la limite de l'expansion française en Afrique septentrionale, visée dans ma lettre précitée de Votre Excellence du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée (to the 1899 Declaration)."

The CC-M contends that this paragraph defined the sphere of influence of Italy recognised by France in the first paragraph; and it emphasises the word "frontière" contained in the text:

> "Le mot 'frontière' est important: la Tripolitaine, intégrée à l'Empire Ottoman a une frontière; la France accepte, par avance, que l'Italie en prennent possession, mais dans le cadre de limites bien précises qui sont, aux yeux des parties, celles, existantes, de la frontière figurant sur la carte[45]."

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[43] CC-M, para. 8.37.

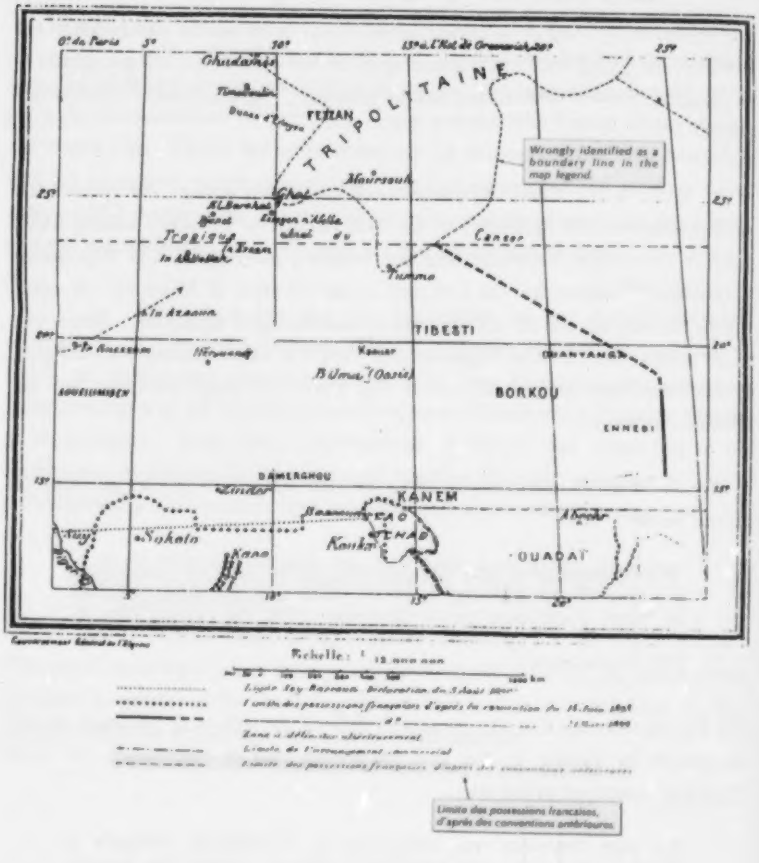
[44] Taken from the text of the 1900 Accord (Visconti-Venosta letter).

[45] CC-M, para. 8.37.

LR 12A

Extrait

de la Carte annexée à la déclaration additionnelle
du 21 Mars 1899 à la Convention Franco-Anglaise du 14 Juin 1898


0° de Paris
5°
10°
15° à l'Est de Greenwich 20°
25°
Ghadamès
Timellouline
Dunes d'Eguel
FEZZAN
TRIPOLITAINE
Mourzouk
Ghat
El Barekat
Djanet
Tasyen n'Ahlle
Tropique du Cancer
In Azaoua
Toummo
TIBESTI
In Ouzzal
Kaouar
Bilma (Oasis)
OUANYANGA
BORKOU
ENNEDI
AOUELLIMIDEN
DAMERGHOU
Zinder
KANEM
Barroua
LAC TCHAD
Kouka
Abecher
OUADAÏ
Say
Sokoto
Kano
Gouvernement Général de l'Algérie
Echelle : 1/12.000.000
1000 km
Ligne Say-Barroua. Déclaration du 5 Août 1890
Limite des possessions françaises d'après la convention du 14 Juin 1898
d° 21 Mars 1899
Zone à délimiter ultérieurement
Limite de l'arrangement commercial
Limite des possessions françaises d'après des conventions antérieures
Wrongly identified as a boundary line in the map legend
Limite des possessions françaises, d'après des conventions antérieures

6.53 This is wrong for several reasons. Turning to the text of the second paragraph quoted above, it is evident that it was intended to clarify the meaning of M. Barrère's unilateral Declaration in 1900: it specifically refers to his letter. What the text says is that by the reference in 1900 to the "limite de l'expansion française" in North Africa was meant "la frontière de la Tripolitaine indiquée par la carte annexée" to the 1899 Declaration. Thus, this paragraph - which was added at Signor Prinetti's request - did no more than clarify what was meant in the 1900 Accord. This was done by reference to a map, misrepresented as having been annexed to the 1899 Declaration.

6.54 It is appropriate to examine again the full-scale colour reproduction made by Libya of this famous map annexed to the Livre jaune version of the 1899 Declaration. The original map is not difficult to find in Paris: Libya located an excellent copy in the library of the Ecole Libre des Sciences Politiques in Paris[46]. Nowhere has Chad annexed a full-scale, colour copy of the actual map. However, the colours are important in order to understand the application of the legend on the map[47]. The LC-M demonstrated with the use of Maps LC-M 25 and 26 (referred to at paragraph 4 53 thereof) the distortion of the Livre jaune map made in the extract of this map appearing at page 162 of the CM. This demonstration is made once again here: Maps LR 12A and 12B. The legend on the extract of the map appearing on the left-hand page identifies the wavy, dashed line encircling "Tripolitaine" as a conventional boundary: "Limites des possessions françaises d'après des conventions antérieures". The fold-out map on the right-hand page, an authentic copy of the original map, makes no such identification of the wavy, dashed line - only such a line underlined in gray would fit the description in the legend of a conventional boundary. The line encircling Tripolitania on the map is neither defined nor identified as a boundary in the legend or elsewhere.

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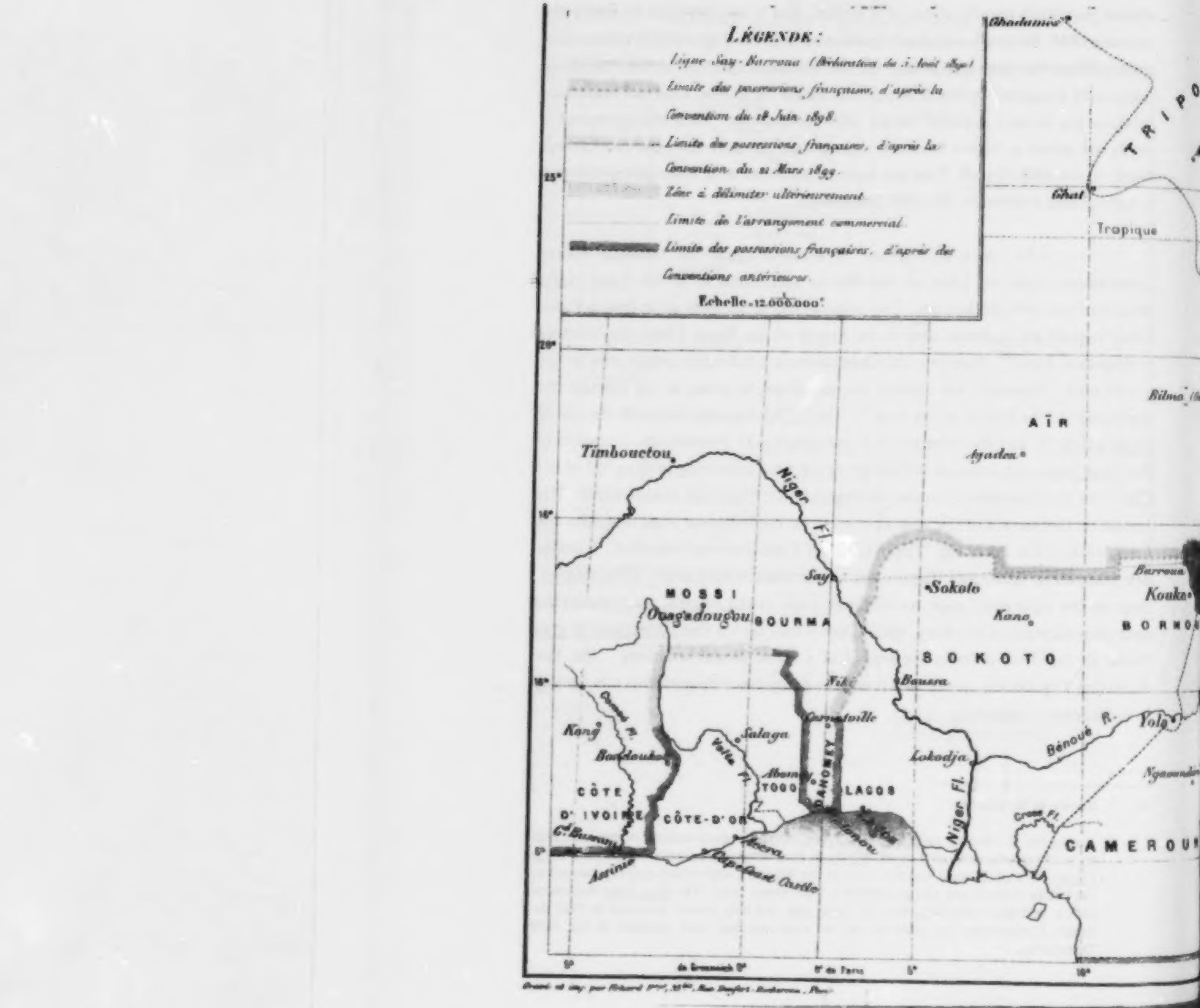
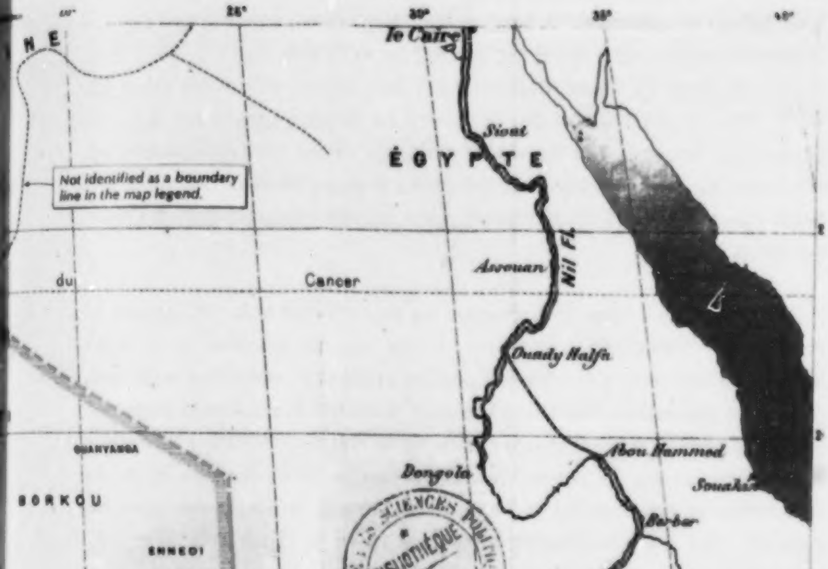
[46] Known as "Sciences Po".

[47] Among the 162 maps in the CC-M's Map Atlas, there are seven versions of this map, such as small reproductions of it in the BCAF, in Prof. Rouard De Card's studies, and in Le Figaro. One of the most bizarre entries in the Atlas is a copy of this map reproduced by the Italian Government and attached to a 1925 Italian study. The Map Atlas incorrectly calls it an Italian map (Map No. 32). Inter alia, this map reveals that even in 1925 the Italian Government was unaware that no such map had been annexed to the 1899 Declaration.


LÉGENDE :
Ligne Say-Barroua (Déclaration du 5 Août 1890)
Limite des possessions françaises, d'après la Convention du 14 Juin 1898.
Limite des possessions françaises, d'après la Convention du 21 Mars 1899.
Zône à délimiter ultérieurement.
Limite de l'arrangement commercial.
Limite des possessions françaises, d'après des Conventions antérieures.
Echelle 1/12.000.000e
Ghadamès
TRIPO
Ghat
Tropique
25°
20°
15°
10°
5°
Bilma
AÏR
Agadez
Timbouctou
Niger Fl.
Say
Barroua
Kouka
BORNOU
MOSSI
Ouagadougou
GOURMA
Sokoto
Kano
SOKOTO
Niki
Bouss
Carnotville
Salaga
Kong
Comoé Fl.
Bondoukou
Volta Fl.
Abomey
TOGO
DAHOMEY
LAGOS
Lokodja
Bénoué R.
Yola
Ngaoundéré
CÔTE D'IVOIRE
CÔTE-D'OR
Gd Bassam
Accra
Kotonou
Lagos
Niger Fl.
Cross Fl.
CAMEROUN
Assinie
Cape Coast Castle
0°
de Greenwich 0°
0° de Paris
5°
10°
Gravé et imp. par Erhard Fres, 35bis, Rue Denfert-Rochereau, Paris

LR 128


20°
25°
30°
35°
40°
NE
le Caire
Siout
ÉGYPTE
du
Cancer
Assouan
Nil Fl.
Ouady Halfa
Abou Hammed
Souakim
Dongola
Berber
Omdurman
Khartoum
Atbara R.
OUANYANGA
BORKOU
ENNEDI
Abéché
El Fâcher
OUADAI
DARFOUR
KORDOFAN
El Obéid
Nil Bleu
ABYSSINIE
Fachoda
B. el Arab
Hofrat-en-Nahas
Ghazal
Sobat R.
Chari R.
Meshra-er-Rek
R. Soueh
Rohl R.
Nil Fl.
Lado
CONGO FRANÇAIS
M'bomou R.
Ouellé R.
Oubangui R.
ÉTAT DU CONGO

Not identified as a boundary line in the map legend.

ÉCOLE LIBRE DES SCIENCES POLITIQUES BIBLIOTHÈQUE

6.55 As mentioned above, a Tripolitanian boundary had never been defined by agreement. A notional boundary existed, however; and this can be detected on the colour version of the 1892 Justus Perthes map found in Chad's Map Atlas (Map 2), where it appears as a faint broken yellow line (Map LR 13)[48]. This was the origin of that line placed on the livre jaune map. It was to this notional boundary that the second paragraph of the 1902 Accord referred, indicating that it was explained to the Italian Foreign Minister that this wavy, dashed line was what M. Barrère meant when he referred to the limits of French expansion.

6.56 Thus, to summarize, the map referred to in 1902 showed no boundary for Tripolitania, only a wavy, dashed line, not identified in the map's legend, but representing its notional boundary at the time, which had never been defined by convention. The use of the word "frontière" in the second paragraph of the 1902 Accord refers to that line as shown on that map. Whether M. Barrère showed such a map to Signor Visconti-Venosta in 1900, when he made the explanation to him referred to in the 1902 Accord, is not known from the evidence. Nor is it clear whether a map was shown to Signor Prinetti in 1902, although it seems unlikely because, as the LM shows, he subsequently had to request Italy's Paris Embassy to send him a copy of the Livre jaune map after the Accord had been signed[49].

6.57 There is not the slightest hint in the text of either Accord - or in any other evidence - that either Italy or France regarded this limit to French expansion to be a boundary - thus upgrading it from the notional boundary shown on the map. Even if they had, neither had standing to reach such an agreement concerning territory under Ottoman sovereignty. Moreover, at the time, French military forces had not occupied territories adjoining the notional boundary of Tripolitania, on the west, anywhere near as far south as Toummo; and in the south, the French were still only in the region of Lake Chad.

6.58 It is clear, therefore, that the 1902 Accord did not produce or result in any kind of boundary. The southeast line under Article 3 of the 1899 Declaration, which appeared on the Livre jaune map, was of no relevance to the subject of this Accord or of the 1900 Accord, and is not referred to in either of

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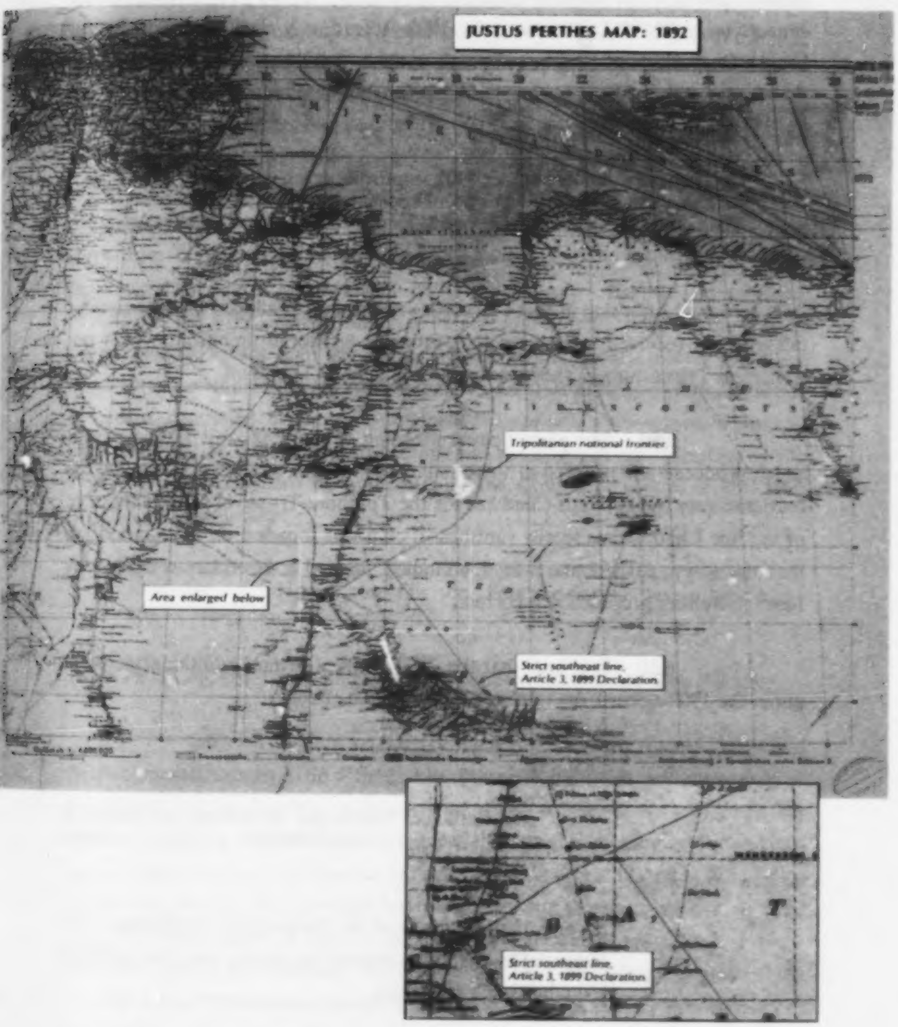
[48] Map LR 13 appears again at para 6.160 (last comment, p.160), below.

[49] See, LM, para. 5.93.

LR 13



JUSTUS PERTHES MAP: 1892

Tripolitanian national frontier
Area enlarged below
Strict southeast line, Article 3, 1899 Declaration
Strict southeast line, Article 3, 1899 Declaration

them. There is no acknowledgment by Italy of anything in either Accord concerning the 1899 Declaration; the 1902 Accord only clarified the unilateral French Declaration of 1900 by reference to the notional boundary of Tripolitania shown on a map. There is, thus, no basis for this statement that appears in the CC-M:

> "... l'échange de lettres de 1902 confirme celui de 1900. Leur combinaison constitue une reconnaissance par l'Italie de la zone d'influence française prévue par la Déclaration franco-britannique de 1899[50]."

Italy recognised nothing in these Accords concerning an alleged French zone of influence; it received assurances that France's territorial ambitions would not transgress Tripolitania as shown notionally on a map. That is all.

6.59 The plain textual meaning of the 1900 and 1902 Accords, which produced and resulted in no boundary of any kind, exposes the fact that the only, and very fragile, basis Chad has for the Toummo-Tropic of Cancer segment of the line Chad claims totally vanishes. For it was founded on the supposition that the wavy, dashed line was a boundary, indeed a boundary accepted by Italy[51]. Neither proposition is correct.

6.60 It is here that the CC-M makes several additional mistakes about the 1902 Accord, saying that it had a double effect:

- First, that -

  > "... la France et l'Italie, par cet échange de lettres, se reconnaissent mutuellement des zones d'influence[52].";

- Second, that the limits of the Italian zone of influence were indicated by the wavy, dashed line on the map (the notional boundary of Tripolitania).

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[50] CC-M, para. 8.38.

[51] See, CC-M, para. 8.142.

[52] CC-M, para. 8.144.

The *first* contention totally misses the meaning of the 1902 Accord. The mutual recognition of its first paragraph concerned giving France a free hand, *not in Tripolitania, but in Morocco*; and as pointed out above, no Italian zone of influence over Tripolitania was or could have been agreed in 1902 by France[53]. Thus the *second* point falls, as well.

6.61 The discussion of the *Livre jaune* map appearing at paragraphs 8.145 to 8.160 of the *CC-M* is quite beside the point. The map showed no Tripolitanian boundary, only a notional one. So whether Italy might have protested that it had been misled about the map - since it had not been annexed to the 1899 Declaration - is of no real importance: there was nothing to protest against, for the map showed no Tripolitanian boundary, merely a notional one that was adequate for the specific purpose of illustrating the limits of French expansion contained in French Ambassador Barrère's unilateral statement in 1900. The *CC-M* discusses what it claims was the effect of the reference to this map in the 1902 Accord by quoting from the Court's Judgment in the 1986 *Burkina Faso/Mali* case:

> "De ce fait, elle a acquis, pour la France et l'Italie, 'une valeur juridique intrinsèque aux fins de l'établissement des droits territoriaux'[54]."

This is all wrong; but it does suggest how dependent Chad's case is on this map.

6.62 The plain meaning of the text of the 1902 Accord shows that the Accord had nothing to do with establishing territorial rights; and the parties to the Accord had no standing to do so at the time. It is apparent why Chad has avoided producing a faithful reproduction of the actual map annexed to the *Livre jaune*, which is so easily obtainable in Paris, and instead has placed in the *CM* an extract that distorts the map and has included some seven extracts in its *Map Atlas* that either distort or obscure the meaning of the wavy, dashed line. For the map itself shows no boundary for Tripolitania; and the reference in the 1902 Accord to the Tripolitanian boundary shown on the map, could not have had the effect of transforming that line into a boundary as Chad now seeks to do, for the map did not show the wavy, dashed line encircling Tripolitania as a boundary. It was only a notional boundary that had never been fixed by agreement in 1900 or in 1902.

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[53] *See*, also, *CC-M* para. 8.170(v) where Chad wrongly contends that in the 1900-1902 Accords Italy recognised a French zone of influence up to the Tripolitanian boundary shown on the map. Italy only recognised France's right to pursue its ambitions *in Morocco*.

[54] *CC-M*, para. 8.157.

6.63 The CC-M says that:

> "Le segment allant de Toummo au Tropique du Cancer n'a jamais été modifié depuis 1902[55]."

It would have been more accurate to say that this segment never was a boundary either before or after 1902; and that remains true today[56]. The CC-M, in fact, seems to go part way in acknowledging the weakness of its case concerning this segment of the boundary when it admits that Chad:

> "... ne prétend pas qu'il y ait là une présomption irréfragable en soi. Mais elle constate que la Libye n'a pas apporté le début d'une preuve contraire[57]."

The plain meaning of the 1900-1902 Accords is all the proof needed to refute Chad's case concerning the claimed boundary along the line between Toummo and the Tropic of Cancer.

6.64 There are two pieces of negative evidence of special significance regarding the intended meaning of the 1900-1902 Accords. These consist of the two summaries prepared by Ambassador Barrère in 1902 and then in 1912 (when the French Government was considering whether to abrogate the 1902 Accord). In neither report is any mention made of the interpretations Chad now attempts to draw from these Accords. It is unthinkable that such detailed analyses by such a qualified person as M. Barrère would have overlooked important matters of this kind had there been any thought that such was the meaning of these Accords. The line of argument put forward by France, and since then adopted by Chad, was not developed until after 1914, when these secret Accords first became known[58].

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[55] CC-M, para. 8.160.

[56] The statement in CC-M, para. 8.166, that in the 1899 Declaration, Great Britain and France had established that the Tripolitanian boundary extended up to the starting point of the Article 3 southeast line at the Tropic of Cancer, is pure fantasy. The 1899 Declaration had nothing to do with Tripolitania and made no reference to it; it was this silence that provoked the French assurance in the 1900-1902 Accords concerning the limits of its expansion.

[57] CC-M, para. 8.169.

6.65 In Chapter 7 of the CC-M, which takes up the subject of Libya's succession to the rights of the Ottoman Empire, Chad makes certain additional remarks concerning the effect of the 1902 Franco-Italian Accord in discussing the 1912 Franco-Italian Agreement. It wrongly states that the purpose of the 1902 Accord was to:

> "... délimiter les zones respectives d'influence et d'établir la limite au-delà de laquelle chacune des Parties n'aurait pu aller, dans son action politique et militaire future[59]."

This is totally incorrect, as shown above; in the 1902 Accord, Italy recognised France's interest in developing its sphere of influence in Morocco, and France recognised Italy's potential interest in Tripolitania-Cyrenaica. There is no basis at all for contending that the engagements undertaken by Italy and France concerned "la limite spatiale de leur action réciproque au sud de la Libye et au nord du Tchad"[60].

6.66 From these incorrect contentions, Chad goes on to claim that, as a result:

> "... le tracé de 1899, accepté par l'Italie en 1902, fut transformé en frontière réciproquement reconnue par les deux Etats[61]."

What a remarkable shift! In the 1902 Accord, Chad argues, Italy recognised the notional boundary shown on the map referred to as the boundary of Tripolitania. It has been shown why this is not so. Now the CC-M shifts to the 1899 southeast line, to which the 1902 Accord made no reference at all. Through a negligent misreading of the first paragraph of the Accord ("susmentionnées" not sousmentionnées)[62], Chad claims that Italy recognised France's zone of influence outside the confines of the Tripolitania boundary shown on the map. The CC-M then asserts that, as a result of the 1902 Accord with Great Britain, Italy regarded itself as virtually a party to the 1899 Declaration, from which Chad concludes that Italy accepted the southeast line. This then leads Chad to the following conclusion concerning the effect of the 1912 Agreement (which will be taken up below following a brief discussion of the 1902 Anglo-Italian Accord), because of its reaffirmation of the 1902 Accord:

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[58] See, Rouard De Card, E.: Le différend franco-italien concernant la frontière méridionale de la Libye, Paris, Pedone/Gamber, 1929, pp. 7-9.

[59] CC-M, para. 7.30.

[60] Ibid.

[61] CC-M, para. 7.31.

[62] See, para. 6.50, above.

> "En souscrivant à l'Accord de 1912, l'Italie s'engageait donc explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye. Par voie de conséquence, l'Italie s'engageait à ne pas avancer de prétentions fondées sur ses droits de succession à l'Empire ottoman[63]."

This is an important shift in Chad's case. Instead of basing Italy's alleged renunciation on the 1902 Accord, Chad now contends that the renunciation occurred in 1912, after the Treaty of Ouchy, when Italy had attained sovereignty over Tripolitania[64].

SECTION 4. 1902 Anglo-Italian Accord

6.67 The 1902 Accord between Italy and Great Britain consisted of the simultaneous exchange of several documents. It qualifies, Libya believes, as falling within the category "actes internationaux", but it does not appear on the Annex I list. It clearly produced no boundary; and Libya understands that it was not en vigueur on the critical date, not having been notified by the United Kingdom under Article 44 of the 1947 Italian Peace Treaty. Its importance lies in the light it sheds on the meaning of the 1899 Declaration. For in the exchanged documents, Great Britain made clear to Italy its interpretation of the 1899 Declaration[65]. These documents, combined with the Lansdowne-Currie dispatch of 3 February 1902, establish beyond any doubt that, as to territories north of 15°N latitude, the 1899 Declaration had been carefully drafted, in Article 3, to define a line "beyond which the French Government would not at any time advance its pretensions"[66]. The 1899 Declaration was intended to avoid "bringing into question the existing rights of other Powers or any prospective claim they might hereafter put forward".

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[63] CC-M, para. 7.35.

[64] The complexity of Chad's arguments concerning the 1902 Accord is dazzling. And yet Chad's pleadings maintain that Chad advances a simple case!

[65] This Accord was signed shortly before the 1902 Franco-Italian Accord.

[66] See, LM, para. 5.105.

6.68 The CC-M's discussion of the relevant documents is highly selective, leading to the following remarkable conclusions[67]:

- The 1902 Anglo-Italian Accord matched the 1900 Franco-Italian Accord, being based on the same idea;
- This idea was that, in the 1900 Accord, Italy's sphere of influence was recognised and that, as a result of the 1902 Accords with France and Great Britain, Italy recognised the British and French spheres resulting from the 1899 Declaration;
- Accordingly, Italy in fact became a party (at least in respect to the French zone) to that Declaration, which thereafter was opposable to Italy.

This, of course, does not reflect at all the British view as expressed in the documents exchanged with Italy that constituted their 1902 Accord[68]. It is contrary to the ordinary meaning of this Accord in the light of its aim and purpose and its context, none of which the CC-M properly examines.

6.69 In reviewing the background of this Accord, the CC-M takes completely out of context a conversation with Signor Prinetti reported by Lord Currie, the British Ambassador in Rome, to Lord Lansdowne, the Foreign Minister, in a dispatch of 13 January 1902[69]. There were in fact five such dispatches in January 1902[70], but the context of this Accord goes back to 1899 when Admiral Canevaro, the Italian Foreign Minister, sought a three-party agreement in which Italy's special status in Tripolitania would be explicitly recognised. Both Great Britain and France promptly rejected this proposal, giving as their reason the commitments they had made to respect the integrity of the Ottoman Empire. As the LM stated:

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[67] CC-M, para. 8.29.

[68] See, LM, para. 5.103, et seq.

[69] See, CC-M, para. 8.28.

[70] See, LM, para. 5.103.

> "The Quai d'Orsay ... feared the repercussions of such a declaration, which would be tantamount to the recognition of or acquiescence in Italy's ambitions with regard to Tripolitania[71]."

It was shortly thereafter that the Porte vigorously protested the 1899 Declaration.

6.70 The relevant 1902 documents forming part of the background of the 1902 Anglo-Italian Accord bring out the fact that Italy sought more from Great Britain and France in the way of recognition of its potential interests in Tripolitania than either was prepared to accord to Italy. The passage quoted in the CC-M from Lord Currie's dispatch of 13 January 1902 set out what Italy wanted but was refused: recognition of an Italian sphere of influence, thus making Italy virtually a party to the 1899 Declaration[72]. Chad tries to construct out of Italy's proposal, which had been rejected by Great Britain and France in 1899 and again in 1902, a theory that the 1900 and 1902 Accords accomplished Italy's purpose. This makes no sense; both Great Britain and France refused to recognise an Italian zone of influence. There is also nothing in Italy's Accord with Great Britain that recognises a British sphere, and the 1899 Declaration does not mention anything at all about a British zone or sphere of influence. Thus, Chad's contention that the 1899 Declaration, combined with the 1900 and 1902 Accords, resulted in the three Powers recognising each other's zones of influence is totally wrong. Italy's aim to have Tripolitania recognised as falling within its zone of influence was rejected. For its part, Italy never recognised any British or French zone of influence. Great Britain explicitly stated that the 1899 Declaration north of 15°N latitude only created a limit to French expansion and was not a delimitation of zones of influence; and Great Britain itself asked for no zone of influence, and none was recognised[73].

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[71] LM, para. 5.51.

[72] See, CC-M, para. 8.28.

[73] Great Britain's situation was complicated by the fact that its influence over regions adjoining Cyrenaica was indirect, for any soverign rights over regions to the east of Cyrenaica were held by the Khedive of Egypt.

SECTION 5. Treaty of Ouchy (1912); 1912 Franco-Italian Agreement

(a) Introduction

6.71 The CC-M takes up these two "actes internationaux", neither of which appear on the Annex I list, in the course of examining the question of Libya's inheritance of territorial rights and titles in the borderlands from the Ottoman Empire[74]. Chad offers three arguments to establish that Libya's claim based on its Ottoman heritage (via Italy) is "radicalement mal fondée"[75]. The first argument - that the Ottoman Empire never acquired any sovereign rights in the area - will be dealt with in Chapter VII, Section 5. The second argument, however, is directly relevant to both the Treaty of Ouchy and the 1912 Agreement. Chad argues that, even if the Ottoman Empire had held sovereign territorial rights (jointly with the Senoussi peoples), Italy did not succeed to them in respect to Libya's southern boundary:

> "... car l'Italie réitéra par l'accord POINCARE-TITTONI de 1912 sa reconnaissance de la frontière méridionale de la Libye telle qu'elle avait été établie par l'accord franco-anglais de 1899 reconnu par l'accord franco-italien de 1902. Donc, même à supposer que la Turquie ait eu des droits souverains sur la région, ou des droits concernant la délimitation de la frontière méridionale de la Libye, l'Italie renonça à ces droits du fait qu'elle conclut avec la France un accord portant sur la frontière de 1899[76]."

6.72 In spite of Libya's careful legal analysis of the Treaty of Ouchy in its Memorial, the CC-M finds a failure there to discuss the general principles involved. Then, following a discussion of the principles of international law concerning State succession - as to which the Court requires no lecture - the CC-M concludes that the general principles are superfluous as a result of the 1912 Agreement. In this way, Chad would dispose of the relevance of the Treaty of Ouchy.

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[74] See, CC-M, Chapter 7. It should be mentioned again that certain "actes" that failed to appear on the Annex I list are, nevertheless, extensively discussed in Chad's pleadings and are given an important role by Chad in seeking to establish a conventional boundary.

[75] CC-M, para. 7.02.

[76] CC-M, para. 7.02. Chad's third argument is that, after 1912, Italy never invoked Ottoman rights and titles, relying instead on the 1902 Accord and, later, on Article 13 of the 1915 Treaty of London. This argument is also unfounded as well as misleading (see, para. 6.198, et seq., below).

6.73 The Treaty is not avoided this easily, for on 20 October 1912, only five days after the Treaty was signed, France recognised Italy's inheritance of sovereign rights thereunder from the Ottoman Empire; as reported by French Foreign Minister Poincaré to Ambassador Barrère in Rome:

> "Je viens de déclarer à M. Tittoni que 'le Gouvernement de la République reconnaît la souveraineté de l'Italie sur la Tripolitaine et la Cyrénaïque'[77]."

M. Poincaré then set out the text of the agreement proposed to be entered into a few days later as a quite separate matter in order to avoid any linkage (which Italy had strongly opposed). The text of the Agreement itself was settled in only eight days of negotiations. So recognition of Italy's sovereignty and agreement on the text of the Agreement, expressing the quid pro quo to be received by France for according such recognition, were accomplished within the very short time period of 13 days after the Treaty of Ouchy was signed (15 October 1912). In 1912, Italy's inheritance of Ottoman rights was clearly not in issue.

6.74 Neither France nor Great Britain (which at the time also had recognised that Italy had acquired sovereignty over Tripolitania-Cyrenaica by virtue of the Treaty of Ouchy) expressed any reservations concerning the effect of the Treaty of Ouchy in transferring sovereignty over Libya to Italy. In Article 10 of the secret 1915 Treaty of London they reaffirmed this recognition of the transfer of Ottoman rights to Italy, again without any reservations:

> "All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy[78]."

If, in 1915, France had believed that an exception existed, by virtue of the 1900-1902 Accords and the 1912 Agreement, with respect to Italy's inheritance of Ottoman rights and titles over territories lying within the Libyan hinterland, the French Government would have been bound to have registered some form of reservation. But just as in the case of the Treaty of Ouchy and in the case of France's recognition of Italian sovereignty in 1912, Article 10 contains no reservation of any kind.

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[77] Dispatch, Poincaré-Barrère, 20 October 1912, LR Exhibit 5.

[78] See, LM, para. 5.150, et seq.

6.75 Thus, Article 10 of the 1915 Treaty of London refutes Chad's contentions that the 1900-1902 Accords and the 1912 Agreement were a formal repudiation by Italy of its inheritance from the Ottoman Empire of territorial rights and titles over territories lying to the south of Tripolitania-Cyrenaica. France's agreement, without reservation, to Article 10 of the 1915 Treaty of London barred France from thereafter claiming that in 1902 or 1912 Italy renounced its Ottoman heritage; and Chad is, as a result, barred from making that argument today. This is so quite aside from the fact that the 1900-1902 Accords and the 1912 Agreement did not have the effect of a repudiation by Italy of any rights and titles inherited from the Ottoman Empire, in the first place[79].

(b) The Role of the 1912 Treaty of Ouchy in the Settlement of the Present Dispute

6.76 The analysis of the Treaty of Ouchy presented by Chad is preceded by a peculiar dissertation to the effect that Libya had not contributed "le moindre début de démonstration juridique" to justify the affirmation that Italy succeeded to the Ottoman Empire under the terms of the Treaty of Ouchy[80]. As just mentioned above, Chad blames Libya for not discussing the general legal principles governing this subject. However, at the end of this lecture, Chad discovers, with the help of a rich variety of doctrinal quotations, that the principle to be retained is precisely what Libya had indicated in its Memorial; namely, that in that era, in the event of annexation of the territory of one sovereign State by another -

> "... la succession d'Etat ne portait atteinte ni aux frontières ni aux droits et obligations se rapportant au régime du territoire annexé[81]."

6.77 It is in fact in applying this principle that the correct interpretation of the Treaty of Ouchy is arrived at. The Treaty consecrated legally the succession between the Ottoman Empire and Italy concerning Libya's territory. The territory in question was thus transmitted to Italy in its entirety and under exactly the same conditions as had applied when the territory was part of the Ottoman Empire: i.e., with such boundaries as had been previously fixed or, if none had been so fixed, without precise boundaries[82]. Of course, in the latter case (which was the situation to the south of Tripolitania and Cyrenaica, where no boundary had previously been fixed), Italy inherited all the Ottoman rights, titles and claims on the basis of which such a boundary would in the future be established.

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[79] This has been demonstrated above with regard to the 1900-1902 Accords and is shown below as to the 1912 Agreement.

[80] See, CC-M, para. 7.04, et seq.

[81] CC-M, para. 7.06.

6.78 Certainly, the Treaty of Ouchy says nothing at all about Libya's boundaries. But this fact does not render the Treaty irrelevant, as Chad appears to believe[83]. Chad wrongly understates the importance of the Treaty of Ouchy. This Treaty transmitted to Italy along with Libya's territory the entirety of the territorial demands and claims that the Ottoman Empire could have put forward in its negotiations with France or with any other country in an attempt to determine Libya's boundaries[84]. In other words, the Treaty of Ouchy has a central role to play in the present dispute since it represents the essential legal foundation of the territorial rights of Italy towards France from 1912 onwards, and thus is one of the legal bases of the territorial rights of Libya vis-à-vis Chad today.

6.79 As a result of the Treaty of Ouchy, Italy found itself in the shoes of the Ottoman Empire not merely in respect to the geographical extent of Libyan territory. There was a "personal" dimension to the succession as well. The Ottoman inheritance, in fact, entailed, according to the terms of the Treaty, that Italy exercise its powers towards all the "habitants de la Tripolitaine et de la Cyrénaïque", whose autonomy Italy undertook to respect. It goes without saying that these Libyan peoples could only have been the same peoples who were legally subject to the authority of the Ottoman Empire before the Italo-Turkish war[85].

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[82] See, in this respect, the highly pertinent observation of the U.S. Government on the Report of the International Law Commission on the succession of States in respect of treaties, A/CN.4/SER A/1974/Add. 1(Part 1), pp. 80-81.

> "A successor State can only acquire as its territorial domain the territory and territorial rights of the predecessor. If the territory as held by the State had boundaries firmly fixed ... the successor State inherits all this ... On the other hand, if the territory as held by the predecessor State had a poorly-defined boundary ... the sucessor State acquires what the predecessor had, territory with badly defined boundaries ... ."

[83] See, CC-M, para. 7.10, et seq.

[84] See, on this subject, Waldock, H.: Premier rapport sur la succession d'états en matière de traités, A.C.D.I., 1974, Vol. II, 1st part, p. 84 "... l'Etat successeur ne peut acquérir que les droits que l'Etat prédécesseur avait le pouvoir de lui donner". See, also, in particular, Mochi Onory, A.G.: La succession d'état aux traités, Milan, 1968, p. 128: "... le nouvel Etat succède aussi aux 'claims', c'est-à-dire aux revendications possibles sur ce territoire .... ."

6.80 From this it follows that if before 1912 the Ottoman Empire had enjoyed legal titles over regions within the Libya-Chad borderlands that can be identified on the basis of both territorial criteria (the occupation of the territory in question by the Porte) and personal criteria (the allegiance of the populations to the Ottoman authority), these titles were transmitted to Italy, which had the right to assert them against France in arriving at a conventional delimitation of the southern boundary of Libya. In the absence of a delimitation established in the colonial period, the same titles were transmitted to Libya, which in turn has the right to invoke them now against Chad.

6.81 The CC-M objects that, in any event, the Treaty of Ouchy was res inter alios acta for France, and could not thus have had any legal effect on France[86]. But, Chad disregards the fact that France, like the other major European Powers, recognised explicitly the acquisition by Italy of sovereignty over Libya as a result of the Treaty of Ouchy[87]. Furthermore, France recognised the Treaty of Ouchy itself in a number of multilateral treaties accepting that the above-mentioned Treaty be interpreted in the sense of abolishing all the rights and privileges which remained in favour of the Ottoman Empire[88]. The Treaty of Ouchy was clearly not res inter alios acta for France; to the contrary, France formally recognised the Treaty.

6.82 Certainly, the Treaty of Ouchy had its share of ambiguities, as Chad rightly observes[89]. This resulted from the unusual separation of powers under the Treaty between Italy and the Ottoman Empire (which retained certain rights over Libyan territory) and particularly in the way in which the Treaty seemingly entrusted Italy with the exercise of sovereignty over Libya, whilst the sovereign title seemed to have been retained by the Ottoman Empire. Such ambiguities were entirely removed subsequently, in favour of Italy, through the series of international agreements binding on France footnoted in the previous paragraph.

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[85] See, LM, paras. 5.134-5.138.

[86] See, CC-M, para. 7.09.

[87] See, para. 6.73, above.

[88] Article 10 of the Treaty of London of 1915; Article 121 of the Treaty of Sèvres of 1920; Article 27 of the Treaty of Lausanne of 1923.

[89] See, CC-M, para. 7.12, et seq.

6.83 In conclusion, as a result of this succession, fully recognised by France, Italy received from the Ottoman Empire, together with Libya's territory, all the legal rights and titles relating to it that the Ottoman Empire could have invoked in the negotiations for the delimitation of the southern boundary. Prior to 15 October 1912, Italy could not have waived these rights with dispositive effect (nemo dat quod non habet). Obviously, such a waiver could only have intervened after 15 October 1912. This is the hypothesis which, according to Chad, occurred under the terms of the Tittoni-Poincaré Agreement of 28 October 1912, to which the discussion now turns[90].

(c) 1912 Franco-Italian Agreement (Tittoni-Poincaré)

6.84 The Treaty of Ouchy and Italy's desire for immediate recognition from the major Powers of its sovereignty over Libya form the background of the 1912 Agreement. The Agreement and France's recognition of Italian sovereignty were separate acts. The purpose of the Agreement was to set out France's quid pro quo for prompt recognition. In its discussion of this background, the CC-M largely repeats and requotes what had already been set out in the LM.

(i) Ordinary Meaning

6.85 It is appropriate to turn now to an examination of the ordinary meaning of the text of the Agreement and to test it under the criteria of

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[90] There is one element of Ottoman and French conduct that has an important bearing here. It will be recalled that both the French and the Ottomans considered that it was the Treaty of Ouchy that required the withdrawal of Ottoman civil and military administration, not just from Tripolitania - Cyrenaica, but from the borderlands as well, starting at the end of 1912. This is recognised by Chad in the CM (see, CM, p. 180, paras. 137-138). It was so perceived by the French military at the time, as described in the official history of the A.E.F.:

> "Par le traité de Lausanne, signé le 18 octobre 1912, les Turcs abandonnèrent aux Italiens leur souveraineté sur la Tripolitaine et la Cyrénaique. La Senoussiya restait seule maîtresse au Borkou et l'attitude déjà assez froide d'Abdallah Toueur ne tarda pas à devenir hostile." Emphasis added. (Histoire militaire de l'Afrique Equatoriale Française, Paris, Imprimerie Nationale, 1931, p. 424. See, LC-M, Exhibit 13.)

Article 3 of the 1955 Treaty. The Agreement itself comprised these two sentences:

> "Le gouvernement de la République française et le gouvernement royal d'Italie, désireux d'exécuter dans l'esprit le plus amical leurs accords de 1902, confirment leur mutuelle intention de n'apporter réciproquement aucun obstacle à la réalisation de toutes les mesures qu'ils jugeront opportun d'édicter, la France au Maroc et l'Italie en Libye.
>
> Ils conviennent de même que le traitement de la nation la plus favorisée sera réciproquement assuré à la France en Libye et à l'Italie au Maroc: ledit traitement devant s'appliquer de la manière la plus large aux nationaux, aux produits, aux établissements et aux entreprises de l'un et l'autre Etats sans exception."

6.86 According to Chad, in entering into the Agreement, Italy:

- "... renonça à toute prétention ou revendication qu'elle aurait pu éventuellement avancer ... en vertu des principes ... concernant la succession entre Etats[91]";

- Arranged things in such a way that a line allegedly delimiting mere spheres of influence (as of 1899) "fut transformé en frontière[92]";

- "... réaffirma d'une manière claire et indiscutable" this boundary, i.e. "s'engageait ... explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye[93]."

6.87 What an array of spectacular legal effects the Agreement produced! Almost to the extent of itself settling the present dispute! What a shame it does not appear among the "actes internationaux" to which Article 3 (and Annex I) of the 1955 Franco-Libyan Treaty refer and thus, according to Chad, cannot be taken into account in determining the boundary[94]! What a pity it was not en vigueur in 1951 because France had omitted to notify it to Italy under Article 44 of the 1947 Peace Treaty! An unbridled imagination is required to read all these remarkable achievements into the meaning of the two sentences of the Agreement just quoted. In fact, Chad even overlooked these remarkable attributes of the 1912 Agreement in its Memorial.

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[91] CC-M, para. 7.18.

[92] CC-M, para. 7.30, et seq.

[93] CC-M, paras. 7.18 and 7.35.

[94] See, CC-M, para. 11.20.

6.88 An examination of the ordinary meaning of the Agreement's text reveals the following:

- It was intended to carry out, in the most amicable fashion, the 1902 Accord between Italy and France;
- In this regard, the parties confirmed their intention, on a reciprocal basis, not to place any obstacle in the way of carrying out any measures they considered opportune: France as to Morocco; Italy as to Libya;
- Each party would extend to the other most favoured nation treatment: France in Libya; Italy in Morocco - in the broadest possible fashion.

There is not a word, not a hint, about boundaries or about lines of any kind!

(ii) Object and Purpose - Context

6.89 Though the ordinary meaning of the text of the Agreement excludes any interpretation that it produced a boundary, the next question is whether there is anything in its context or its object and purpose that would lead to the conclusion that a boundary did result from the 1912 Agreement?

6.90 In considering the historical context of the 1912 Agreement, it should be remembered that the French military campaigns had only just brought the French to the periphery of the borderlands. At the time, these regions were, in France's mind at least, vast, unknown and dangerous desert regions of no economic value. There was no question of installing there a real French colonial administration - and there never was thereafter; the borderlands were merely the site of sporadic French military operations whose purpose was to protect the regions lying south of the borderlands (well below 15°N latitude). There was, thus, no practical reason to fix precise boundaries there. But this was not at all the case as to Libya's boundaries on the west with French Algeria and Tunisia.

6.91 The travaux préparatoires of the 1912 Agreement demonstrate this clearly, as Libya has pointed out in its prior pleadings. Now, however, the CC-M has given this demonstration its unqualified support, for Chad there indicates that all the pertinent documents unambiguously show that France's sole preoccupation at the time was over the Tripolitania-Algeria frontier, not Libya's southern frontier. It was in respect to this French preoccupation that the reference in the 1902 Accord had been made in the 1912 Agreement, according to Chad. Chad does not hesitate to admit ore rotundo that, throughout the 1912 negotiations -

> "... (l)a France ne songea jamais à soulever la question de la frontière méridionale de la Libye."

And so far as Italy was concerned, she -

> "... non plus ne crut bon de soulever la question de la frontière méridionale[95]."

6.92 One has to reread these passages of the CC-M to be sure they are not just a dream. For Chad here expressly recognizes that neither party to the 1912 Agreement raised the question of Libya's southern boundary during the negotiations and that the matter was never discussed; accordingly, not a word concerning the boundary appears in the Agreement's text. How then can Chad maintain that by the 1912 Agreement Italy renounced any Ottoman rights to territories lying south of Tripolitania-Cyrenaica and that Italy and France could have agreed such a boundary by reference to the 1902 Accord? How can such a far-fetched, contradictory argument be seriously advanced?

6.93 The CC-M suggests there was special meaning in the negotiations leading up to this agreement, and breaks these negotiations down into three phases. It also emphasises that the reference to the 1902 Accord was inserted at the request of Italian Foreign Minister Prinetti[96].

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[95] CC-M, para. 7.25.

[96] See, CC-M, paras. 7.18-7.36.

6.94 What is revealed by the evidence concerning the object and purpose of the Agreement is that it constituted the French quid pro quo for formal recognition of Italian sovereignty over Tripolitania-Cyrenaica[97] following the Treaty of Ouchy.

6.95 At the outset, M. Poincaré had suggested to Italy that French recognition of Italy's sovereignty should be subordinated, inter alia, to:

> "... une réserve portant sur la fixation de la partie de notre frontière commune qui n'est pas encore délimitée[98]."

This suggestion, on the face of it, reflected M. Poincaré's view that a part of Libya's boundaries with France or French possessions had not been delimited. French Ambassador Barrère discouraged this linkage, setting out his reasons in this equally revealing statement:

> "Cette délimitation pourrait d'ailleurs à mon sens devenir le prétexte de la remise au point de nos accords [antérieurs] avec l'Italie, comme la partie fixée par la convention franco-anglaise de 1899 fut le motif des accords franco-italiens de 1900 et 1902."
>
> *English translation*
>
> "Besides, that delimitation could in my view become the pretext for having to reclarify our prior accords with Italy, just as the arrangement fixed by the (1899 Anglo-French Declaration) was the reason for the (1900-1902 Franco-Italian Accords)."

In other words, M. Barrère advised against stirring up questions as to the meaning of the 1900-1902 Accords (which were then still secret)[99].

6.96 Initially, Foreign Minister Poincaré took issue with his Ambassador in Rome on this point[100]. He emphasised that France was in a different position from the other Powers vis-à-vis Italy: France had common boundaries with Italy in North Africa, and this was a good occasion to safeguard French interests:

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[97] At the time, what later became Fezzan was subsumed within these two provinces. Often, they were referred to together as the vilayet of Tripoli or, simply, Tripolitania.

[98] Barrère to Poincaré, 17 October 1912, LM, French Archives Annex, p. 142; repeated in CC-M, Annex 30, No. 188 and quoted at para. 7.23.

[99] M. Barrère's position is similar to that taken by the French Government during the 1955 negotiations: to avoid opening up questions as to the meaning of prior agreements.

[100] See, Poincaré to Barrère, 18 October 1912, LM, French Archives Annex, p. 145.

> "(The 1899 Declaration) part du tropique du Cancer et laisse par conséquent indéterminée la frontière sur plus de douze cents kilomètres. Il dépend du Gouvernement italien de formuler sa demande de reconnaissance dans des termes qui réservent entièrement nos droits."

The record does not establish why M. Poincaré, shortly after sending this dispatch, abandoned the idea of linking this boundary delimitation with recognition of Italian sovereignty and agreed to an arrangement in which the matter of boundaries was not taken up at all. The CC-M speculates that this was because there was no need to take up the matter of Libya's southern boundary since the 1902 Accord, by its reference to the Livre jaune map, had established "d'une manière claire" this boundary[101]. This is not plausible: a person as meticulous and informed as M. Poincaré, would not have mistakenly referred to Libya's undetermined boundaries with French territories if they had all been settled in 1902; and M. Barrère, the French negotiator of the 1902 Accord, would have advised M. Poincaré at once that Libya's boundaries had been settled in 1902, if he had thought that was so[102].

6.97 Chad does, on the other hand, correctly conclude that the boundary M. Poincaré was referring to as "indéterminée" was the "frontiere algéro-tripolitaine"[103]. As just discussed, this was an admission by Chad that the 1902 Accord, referred to in the Agreement in an insertion requested by Italy, concerned only the part of the boundary to the west of Toummo[104]. It is also a clear indication that M. Poincaré did not believe that the Tripolitania-Algeria boundary between Ghadamès and the Tropic of Cancer had been agreed as a result of the reference in the 1902 Accord to the Livre jaune map, on which Tripolitania's notional boundary was shown as a wavy, dashed line.

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[101] See, CC-M, para. 7.25. Chad does not seem to have entirely made up its mind whether the 1902 Accord or the 1912 Agreement established Libya's southern boundary - an understandable confusion since it is clear that neither agreement had anything to do with the establishment of boundaries, least of all Libya's southern boundary.

[102] It will be recalled again that in his detailed reports on the 1902 Accord - in 1902 and again in 1912 - M. Barrère never mentioned that it had the effect of fixing any of Libya's boundaries. See, para. 6.64, above.

[103] See, CC-M, para. 7.22.

[104] This is confirmed by the Marin reports of 1914 and 1915. See, LC-M, para 4.247, et seq.

6.98 As just mentioned, the CC-M suggests that, unlike the Tripolitania-Algeria boundary, which was M. Poincaré's concern, the southern boundary of Libya required no discussion, for it had been established "d'une manière claire" by the 1902 Accord and its reference to the 1899 map[105]. The CC-M even goes so far as to suggest that Italy itself raised no questions as to Libya's southern boundary at the time for the reason that Italy also considered that the matter had been resolved by the 1902 Accord[106]. So with complete self-assurance the CC-M contends that the total absence of any reference to a boundary in the 1912 Agreement served to confirm the boundary allegedly established in the 1902 Accord[107] - not the Libya-Algerian boundary, the southern boundary of Libya. It is the reference in the 1912 Agreement to the 1902 Accord - inserted at Italy's request - that is the anchor to Chad's argument; it is an argument conceived in desperation, for if the Chadian thesis concerning the effect of the 1902 Accord and map referred to there (the Non-Annexed Map) is rejected, as it must be, Chad's case for a conventional boundary collapses.

(iii) Travaux Préparatoires

6.99 Chad has furnished a document as part of the travaux of the 1912 Agreement whose significance it apparently has failed to grasp. This is a dispatch to M. Poincaré from the French Ambassador at the Porte dated 19 October 1912[108]. In this dispatch, M. Bompard expressed the same thought as M. Poincaré had the previous day in his message to M. Barrère:

> "La France en est limitrophe (to Libya) sur des milliers de kilomètres; il importe donc que tout d'abord l'Italie accepte les limites fixées par la convention franco-anglaise du 21 mars 1899 et par la convention franco-turque du 19 mai 1910 ..., puis que des dispositions soient convenues en vue de la délimitation entre les points extrêmes des lignes de démarcation tracées par ces deux conventions[109]."

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[105] This argument is a forerunner of a similar argument now made by Chad regarding the 1955 Treaty - that the failure to have negotiated over Libya's southern boundary was a reflection of the fact it had been settled.

[106] See, CC-M, para. 7.25 (ii).

[107] Perhaps inspired by the saying, "Absence makes the heart grow fonder".

[108] See, Bompard to Poincaré, 19 October 1912, CC-M, Annex 32.

[109] Also quoted in full in CC-M, p. 281, fn. 3.

As the CC-M notes, the text as published in the DDF[110] bears the following annotation of M. Poincaré, following the reference to the 1899 Declaration: "M. Bompard ignore-t-il les accords de 1902?" The CC-M suggests that this annotation confirms that the 1902 Accord clearly established Libya's boundary (and an editorial footnote added by the archivists at the French Foreign Ministry when this DDF series was published many years later suggests the same)[111].

6.100 The CC-M misunderstands this note of the French Foreign Minister. The note also contradicts the later annotation of the French archivists. M. Bompard had suggested that this was an opportune moment to secure Italy's acceptance of "les limites fixées" by two treaties not opposable to Italy: the Anglo-French 1899 Declaration and the Franco-Ottoman Treaty of 1910. (M. Poincaré did not question this conclusion.) But this left a gap between the 1910 boundary ending at Ghadamès and the starting point of the 1899 Declaration line ("les points extrêmes des lignes de démarcation tracées par ces deux conventions") (Map LR 14). This gap only partly concerned Libya's southern boundary - for it concerned the frontier between the end point of the 1910 Treaty and the starting point of the 1899 Declaration - only some of which might be described as "méridionale" to Libya (between Toummo and the intersection of the Tropic of Cancer and 16°E).

6.101 Thus, M. Poincaré's note could only have been referring to the Libyan boundary between Ghadamès and the Tropic of Cancer (and 16°E) for he was commenting on M. Bompard's concern that there was no agreement to cover this sector and his suggestion that Italy's acceptance might be sought of a boundary here. As to this part of the boundary, M. Bompard recommended that "des dispositions soient convenues" to fill the gap between the "limites fixées" by the 1910 Treaty and the 1899 Declaration. M. Poincaré then asked the question - is M. Bompard not aware of the 1902 Accord? What he meant by this could only have been that the 1902 Accord should be added as a third agreement whose "limites fixées" should be accepted by Italy. This must have been a reference to the "limite de l'expansion française" mentioned in the 1900 Accord and more precisely identified in the 1902 Accord as the wavy, dashed line on the map

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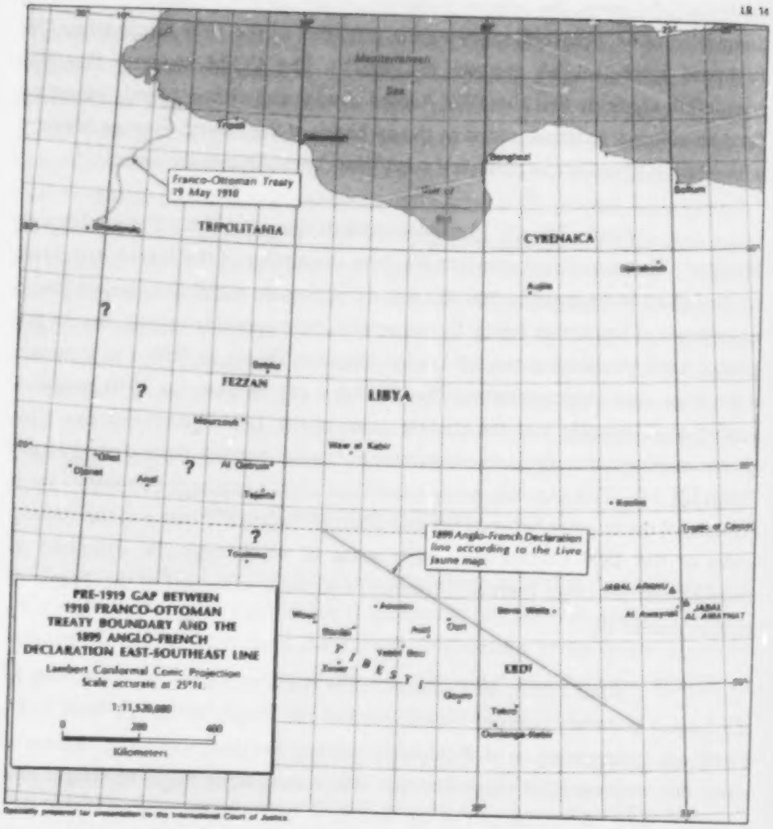
[110] Documents Diplomatiques Français.

[111] The editor's note reads:

> "Suivant la lettre adressée le 10 juillet 1902, par M. Prinetti à M. Barrère, l'Italie acceptait cette limite."


LR 14
Mediterranean
Sea
Tripoli
Benghazi
Franco-Ottoman Treaty
19 May 1910
TRIPOLITANIA
Gulf of
Sirt
CYRENAICA
Aujila
?
Sebha
FEZZAN
LIBYA
Mourzouk
Waw al Kabir
Ghat
Djanet
Al Qatrun
Tejerhi
Toummo
Koufra
Tropic of Cancer
1899 Anglo-French Declaration line according to the Livre Jaune map.
JABAL ARKNU
Al Awaynat
JABAL AL AWAYNAT
Sarra Wells
Aozou
Wour
Bardai
Ouri
Yebbi Bou
Zouar
T I B E S T I
ERDI
Gouro
Tekro
Ounianga Kebir
Lambert Conformal Conic Projection
Scale accurate at 25°N.
1:11,520,000
0
200
400
Kilometers

PRE-1919 GAP BETWEEN 1910 FRANCO-OTTOMAN TREATY BOUNDARY AND THE 1899 ANGLO-FRENCH DECLARATION EAST-SOUTHEAST LINE

Specially prepared for presentation to the International Court of Justice

referred to there - the notional boundary of Tripolitania. Such a conclusion is reflected in the earlier Poincaré-Barrère exchange in which the Foreign Minister referred to this sector of the Libyan boundary as "indéterminée". From this, three conclusions emerge: first, M. Poincaré's note was referring to the boundary west of the intersection of 16°E and the Tropic of Cancer only; second, he clearly did not believe that the 1902 Accord had established that sector of the boundary; and third, M. Poincaré shared the view of his Ambassador in Constantinople that the line described in Article 3 of the 1899 Declaration was not opposable to Italy.

6.102 At the end of the day, M. Barrère's counsel prevailed: not to stir things up concerning the 1902 Accord. The 1912 Agreement contained nothing at all about Libya's frontiers, whether on the west or the south. The reference to the 1902 Accord related only to that part of the Accord having to do with the reciprocal arrangements between Italy and France concerning Morocco and Tripolitania; but in any event, the CC-M concedes that, if it were related to a boundary, it was only to Libya's western, not southern, boundary[112]. The CC-M conjures up "un échange intense de notes diplomatiques sur l'importance de l'accord de 1902". But all this took place in the space of two days and reflected no more than the dealing with the usual last-minute details just prior to the signing of an international agreement.

6.103 There is not an iota of evidence to support Chad's conclusion that:

> "En souscrivant à l'Accord de 1912, l'Italie s'engageait donc explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye. Par voie de conséquence, l'Italie s'engageait à ne pas avancer de prétentions fondées sur ses droits de succession à l'Empire ottoman[113]."

It is clear from the diplomatic dispatches at the time that Messrs. Poincaré, Barrère and Bompard did not believe that the 1902 Accord had settled any boundary question[114]. They toyed with the idea of trying to get Italy to agree that the wavy, dashed line portrayed on the map referred to in the 1902 Accord was the Libyan boundary between the end point of the 1910 Treaty and the starting point of the 1899 Declaration, as well as to accept the 1910 and 1899 lines as boundaries opposed to Italy. But they dropped the whole idea, leaving out of the 1912 Agreement any reference whatsoever to boundaries. Therefore, the 1912 Agreement stands for almost the very opposite of what Chad contends: it confirmed the fact that Libya's boundary beyond Ghadamès all the way to the Sudan frontier was not covered by any international convention opposable to Italy.

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[112] See, paras. 6.91-6.92 and 6.97, above.

[113] CC-M, para. 7.35.

[114] Once again, Chad shows how critical to its case the 1902 Accord is (and the reference there to the Non-Annexed Map). In a major shift in Chad's case, the CC-M now places heavy reliance on the supposed confirmation in the 1912 Agreement of the 1902 Accord, at a time when Italy had just become sovereign over Libya.

(iv) Subsequent Conduct

6.104 Chad has discussed what it describes as the conduct of Italy and France subsequent to the 1912 Agreement that it finds relevant to its interpretation. The examples cited are nothing of the kind, at least in the sense contemplated by the 1969 Vienna Convention. What Chad attempts to do is to fit the conduct relating specifically to the two 1919 agreements subsequently entered into - the 8 September Anglo-French agreement "interpreting" the 1899 Declaration and the 12 September Franco-Italian Accord - within the framework of conduct bearing on the meaning of the 1912 Agreement.

6.105 The elements of subsequent conduct cited by Chad are these: Italy's protests against the Anglo-French Convention of 8 September 1919; and the so-called "déclaration" of Italian Foreign Minister Tittoni to the Italian Chamber of Deputies on 27 September 1919. The Italian protests to the 1919 Anglo-French Convention will be taken up below in the discussion of that agreement. Although the statement of Signor Tittoni was made in the course of discussing the other 1919 agreement - between France and Italy concerning Libya's western boundary - it does have a certain bearing on the meaning of the 1902 Accord as well as on what Chad has to say concerning the 1912 Agreement, so it will be dealt with here.

6.106 It is not necessary to repeat what has already been said in Libya's earlier pleadings about the choice of words used by Signor Tittoni concerning the 1902 Accord in the context of a speech to the Italian Parliament explaining the recently concluded Franco-Italian Accord of 8 September 1919, which concerned Libya's western boundary. His words were subsequently blown up out of all proportion by the French colonialists writing in the BCAF[115] and elsewhere, in an attempt to interpret the 1902 Accord as a renunciation by Italy of the Tripolitanian hinterland claimed by the Ottoman Empire[116]. The CC-M itself illustrates the fragility of this argument built around Signor Tittoni's words.

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[115] The French colonialists' periodical, le Bulletin Colonial de l'Afrique Française.

6.107 First, the CC-M mistakenly refers to it as a "Déclaration" of Signor Tittoni, and adds that it would be difficult not to regard these words "comme la confirmation formelle d'une reconnaissance antérieure indiscutable"[117]. But there was no declaration at all involved. In a side comment, pointing out the sometimes fickle attitude of the Italian public, Signor Tittoni had mentioned, as an example, the outcry that resulted when the Italian public first learned (around 1914) that, in the 1902 Accord (prior to then kept secret), "nous avions reconnu la frontière" of the 1898 Anglo-French Convention (seemingly a mistaken reference intended to be to the 1899 Declaration) "qui avait assigné à la France le Tibesti et le Borkou". It was this perception of the Italian public to which Signor Tittoni was referring - they had just learned of the 1902 Accord[118].

6.108 Second, to try to make the passage from this speech appear to have been a formal declaration, the CC-M has deleted a few words from its quoted text. Instead of referring to what the Italian public learned, the CC-M's rendition simply begins the passage this way: "déjà (in the 1902 Accord), nous avions reconnu la frontière"[119], thus giving the impression that M. Tittoni, rather than the Italian public, had drawn such a conclusion. This is seriously misleading and can only reflect the weakness of the argument. If it is necessary to modify the text of the speech in this way in order to sustain Chad's argument, the speech evidently failed to have the meaning and importance ascribed to it. After a flurry of articles by French colonialists appeared drawing extreme conclusions from these few words, Signor Tittoni made very clear (in a 1927 article reprinted in the BCAF) what he meant and did not mean to say[120]. However, in the meantime, the French had told the British that Foreign Minister Tittoni had made such a "declaration", which led the British to believe that, in the 1902 Accord, Italy had abandoned any Ottoman territorial rights inherited from the Ottoman Empire by the Treaty of Ouchy[121].

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[116] See, CC-M, heading of para. B at p. 289; and para. 8.52.

[117] CC-M, para. 8.52.

[118] The Tombalbaye letter, on the other hand, is an example of a formal declaration clearly intended to bind the State. See, LC-M, para. 5.119, et seq., and fn. 191 at p. 303.

[119] CC-M, para. 8.52. Emphasis added.

[120] See, LM, para. 5.171.

6.109 There is, however, subsequent conduct of both France and Italy that does have an important bearing on the meaning of the 1900-1902 Accords and the 1912 Agreement. This conduct falls into three categories:

- Maps issued by the French and Italian Governments;
- The negotiations scheduled to take place, first, between the Ottoman Empire and France, and then, after the Treaty of Ouchy, between Italy and France;
- France's attempt to secure Italy's recognition of the 1899 Declaration and the 1900-1902 Accords in connection with its offer in 1928 to modify Libya's western boundary delimited by the Franco-Italian Accord of 12 September 1919 in Italy's favour, involving a salient of territory south of Toummo to include the Djado oasis[122].

(A) Conduct of France and Italy: Officially Published Maps

6.110 In 1911-1912, the French Government published two maps, both of which have been introduced into evidence in this case. LC-M Map 28A is discussed in Libya's Counter-Memorial in connection with the 1912 Agreement[123]. Chad's Map Atlas contains the other map (No. 16)[124]. Both maps are reproduced here again (Maps LR 15A and 15B). They appear to be based on the same map prepared by the French Ministry of Colonies. According to Chad's description of its Map No. 16, that map was prepared for the A.E.F. in 1911, annexed to the A.E.F. Annuaire of 1912, and used in connection with the 1911 Franco-German delimitation. So it was unquestionably an official French map.

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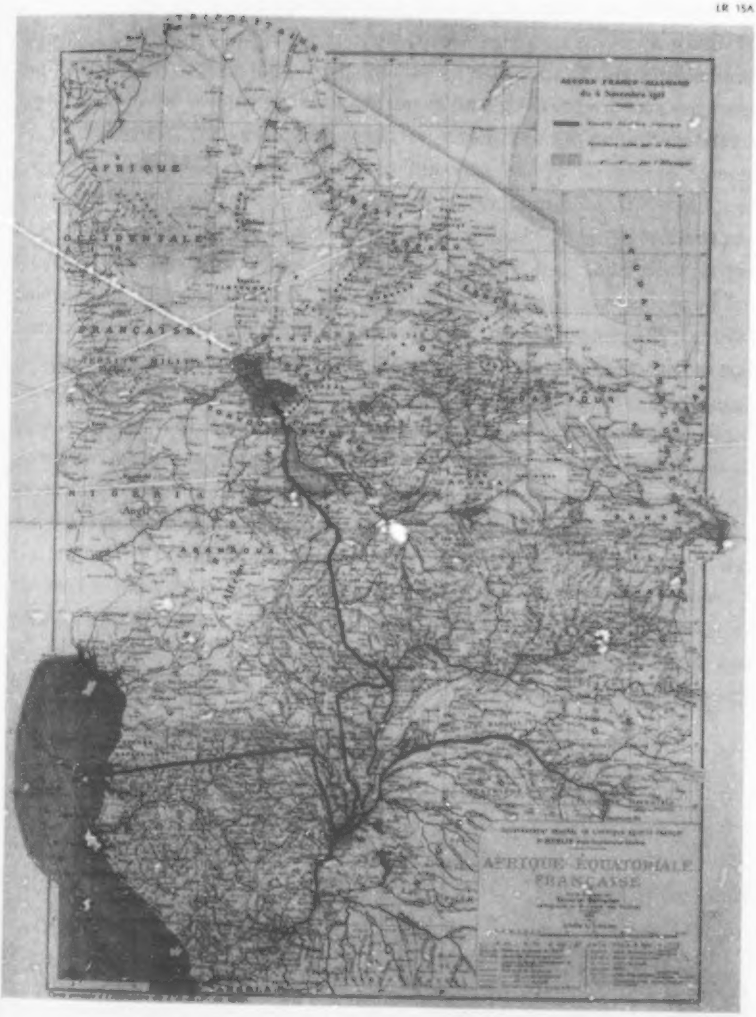
[121] See, para. 6.189, et seq., below.

[122] See, LM, para. 5.260, et seq., and Maps Nos. 74 and 75A and B.

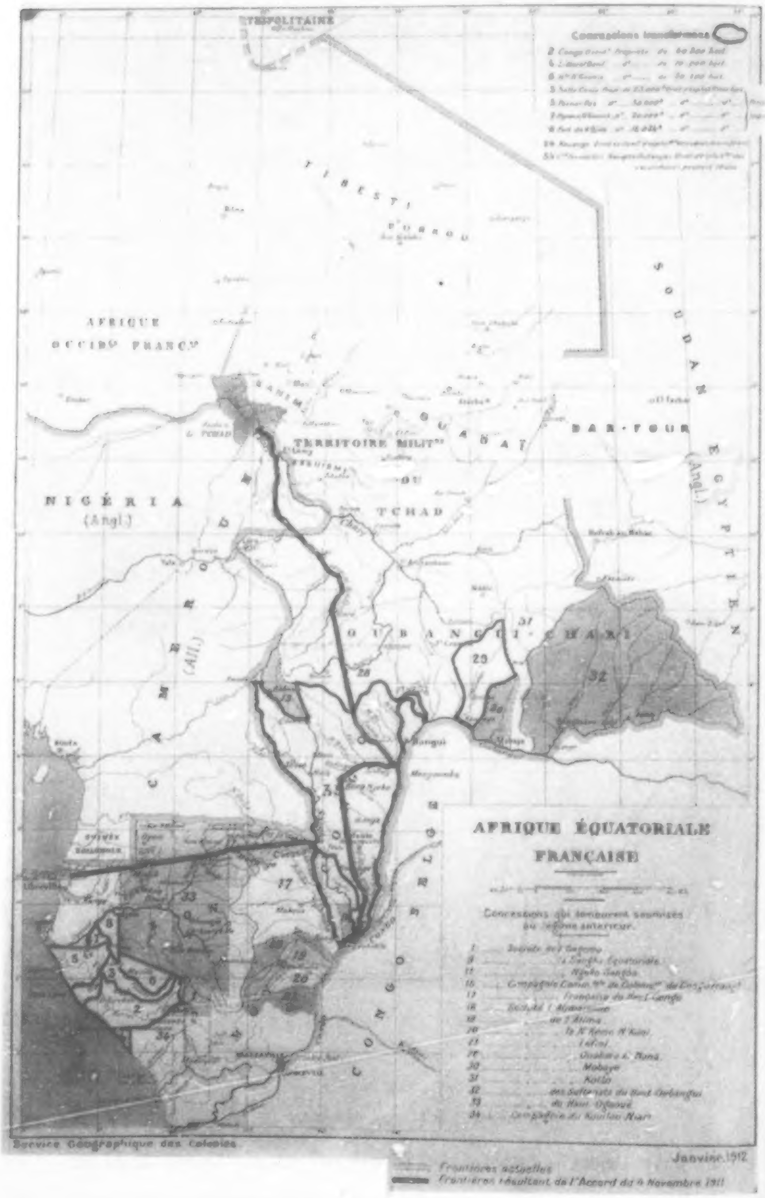
[123] See, LC-M, para. 4.150, et seq. This map was found in the British Public Records Office.

[124] Chad's Map Atlas is analysed in detail in Vol. 2, Supplementary Annex, No. 2.

LR 15A


TRIPOLITAINE
ACCORD FRANCO-ALLEMAND
du 4 Novembre 1911
Territoires cédés par la France
par l'Allemagne
AFRIQUE
OCCIDENTALE
FRANÇAISE
NIGERIA
AFRIQUE ÉQUATORIALE
FRANÇAISE

LR 158


Concessions transformées
TRIPOLITAINE
TIBESTI
BORKOU
AFRIQUE OCCIDle FRANÇse
KANEM
OUADAÏ
DAR-FOUR
SOUDAN ÉGYPTIEN (Angl.)
TERRITOIRE MILITre DU TCHAD
L. TCHAD
NIGÉRIA (Angl.)
CAMEROUN (All.)
OUBANGUI-CHARI
Bangui
Mobaye
CONGO BELGE
CONGO
AFRIQUE ÉQUATORIALE FRANÇAISE
Concessions qui demeurent soumises au régime antérieur.
1 Société du Haut Ogooué
9 la Sangha Équatoriale
11 N'goko Sangha
16 Compagnie Comm.le de Colonis.on du Congo français
17 Française du Bas Congo
18 Société l'Alimaïenne
19 de l'Alima
20 la N'Kémé N'Kéni
21 Léfini
29 Ouahmé & Nana
30 Mobaye
31 Kotto
32 des Sultanats du Haut Oubangui
33 du Haut Ogooué
34 Compagnie du Kouilou Niari
Service Géographique des Colonies
Janvier 1912
Frontières actuelles
Frontières résultant de l'Accord du 4 Novembre 1911

6.111 Both maps incorrectly show the southeast line of Article 3 of the 1899 Declaration as an existing boundary; and the line follows the direction of the east-southeast line on the Livre jaune map on both maps. From 15°N latitude south to 11°N, the boundary is correctly shown (in a different way on each map) as not delimited. The interesting sector, for purposes of the present discussion concerning the 1912 Agreement, is to the west of the Tropic of Cancer intersection point (at the very top of the map). Chad maintains that this sector of Libya's frontier - more fully depicted on Chad's own map (Map LR 15A) between Ghat and the Tropic of Cancer - was agreed between Italy and France as the boundary of Tripolitania in the 1902 Accord by virtue of the reference to the famous Non-Annexed Map; and in any event, by the reaffirmation of the 1902 Accord in the 1912 Agreement (after Italy's sovereignty over Tripolitania had been established and formally recognised), the line shown on the non-Annexed Map in this sector became a boundary binding on Italy. It has been demonstrated above that the ordinary meaning of the 1902 and 1912 texts lends no support at all to such a proposition. The 1911-1912 official maps of the French Government reveal that at the time this was not, in fact, the view of the French Government[125] - and as the diplomatic record discussed above shows, it was clearly not the view of Messrs. Poincaré, Barrère and Bompard[126]. France's conduct in issuing these official maps refutes Chad's contention that, at least by the end of 1912, there was a conventional boundary between Ghat-Toummo and the Tropic of Cancer point of intersection. These two maps show no boundary there.

6.112 Maps published by the Italian Government in 1906, 1912, 1916 and 1917 reveal Italy's understanding of the effect of the 1899 Declaration, the 1900-1902 Accords and, except for the earlier 1906 map, the 1912 Agreement. The 1906, 1912 and 1917 maps, not previously introduced in evidence, appear here as Maps LR 16A-1, 16A-2, 16B and 16C.

6.113 The 1906 Italian map deserves special comment (Maps LR 16A-1 and 16A-2). It was published by the Italian Ministry of Foreign Affairs, not the Ministry of Colonies. Although maps published by both Ministries were equally official, this fact about the 1906 map is important because Chad has tried to dismiss Ministry of Colonies maps on the basis of Chad's invalid "mock war" thesis: that there was a basic, even bitter, difference of view between the two Ministries and that the Ministry of Colonies in the end was overruled[127]. This is pure nonsense, as Libya demonstates in Volume 2 of this Reply[128]. But, in any event, Chad cannot disparage Italy's official 1906 map on this theory for it was a Ministry of Foreign Affairs map[129].

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[125] On neither map is the sector west of the Tropic of Cancer intersection point shown as a boundary. On Map LR 15B, it is shown as a dashed orange line, in contrast to the solid orange line running east-south east from the Tropic of Cancer. On Map LR 15A, the demonstration is even clearer: in much of this sector no line of any kind appears.

[126] See, para. 6.99, et seq., above.

6.114 This map, issued four years after the 1902 Accord, establishes several very interesting points:

- No Tripolitanian boundary is shown, notional or otherwise, corresponding to the wavy, dashed line on the Livre jaune map to which the 1902 Accord referred; and the shaded area, generally representing Tripolitania and Fezzan, extends well west and south of that wavy, dashed line;

- The line of Article 3 of the 1899 Declaration is shown as almost a true southeast line (intersecting 24°E longitude at 16°N latitude - a true southeast line would intersect at 15°35'N);

- The Ottoman claim made in 1890 is portrayed, as well as an area of overlap of territory claimed by both France and the Ottoman Empire;

- North of 15° latitude, no boundary of any kind is shown, and the sector of the Anglo-French boundary falling under Article 2 of the 1899 Declaration is marked on the map as "Confine da definirsi" (boundary to be defined).

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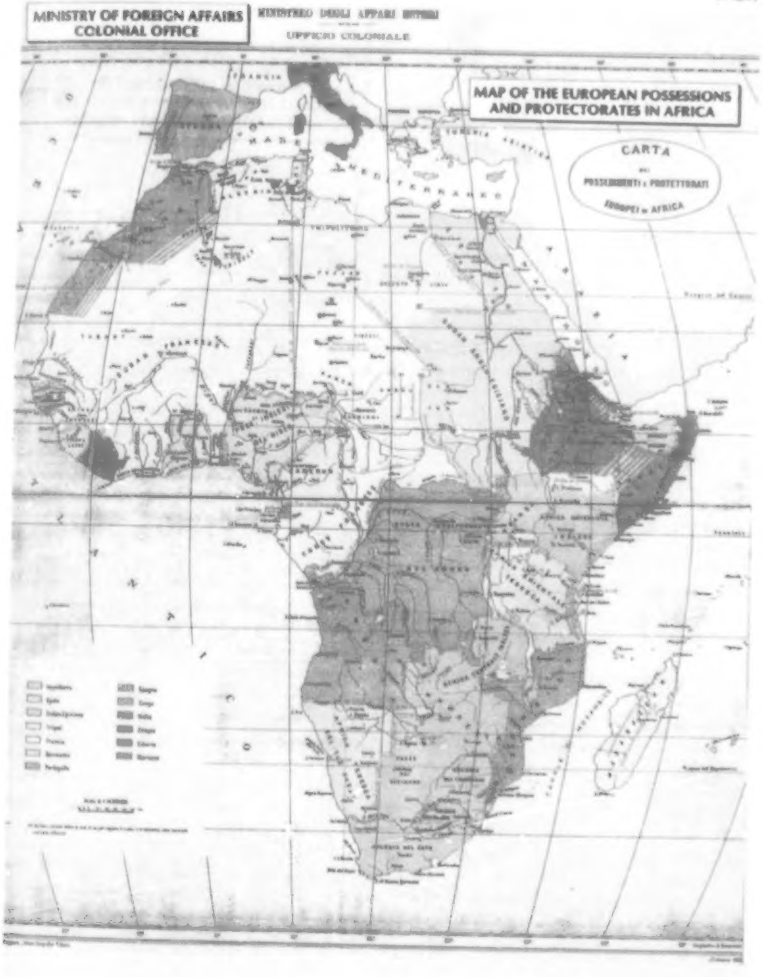
[127] See, CC-M, paras. 7.49-7.60 and para. 10.29.

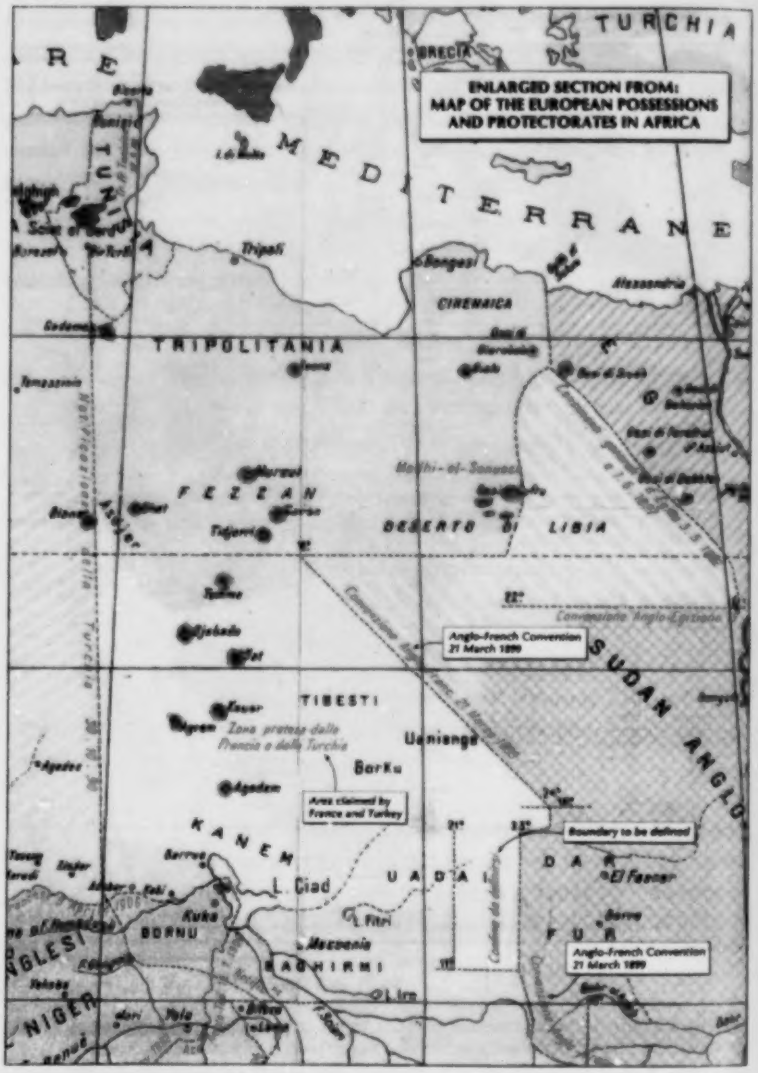
[128] In Supplementary Annex, No. 5, this thesis is examined, together with the relevant documentary evidence; it is demonstrated there that Chad's "mock war" has no basis in fact: the two Ministries were in basic agreement as to the negotiating tactic to adopt with the French. The subject of Italian maps is taken up in Supplementary Annex, No. 2, in which Chad's Map Atlas is analysed. There it is shown how completely Chad's 162-page Map Atlas has ignored the important official Italian maps.

[129] The Colonial Office of the Ministry of Foreign Affairs , which issued the map, reported to the Minister of Foreign Affairs.

LR 16A-1

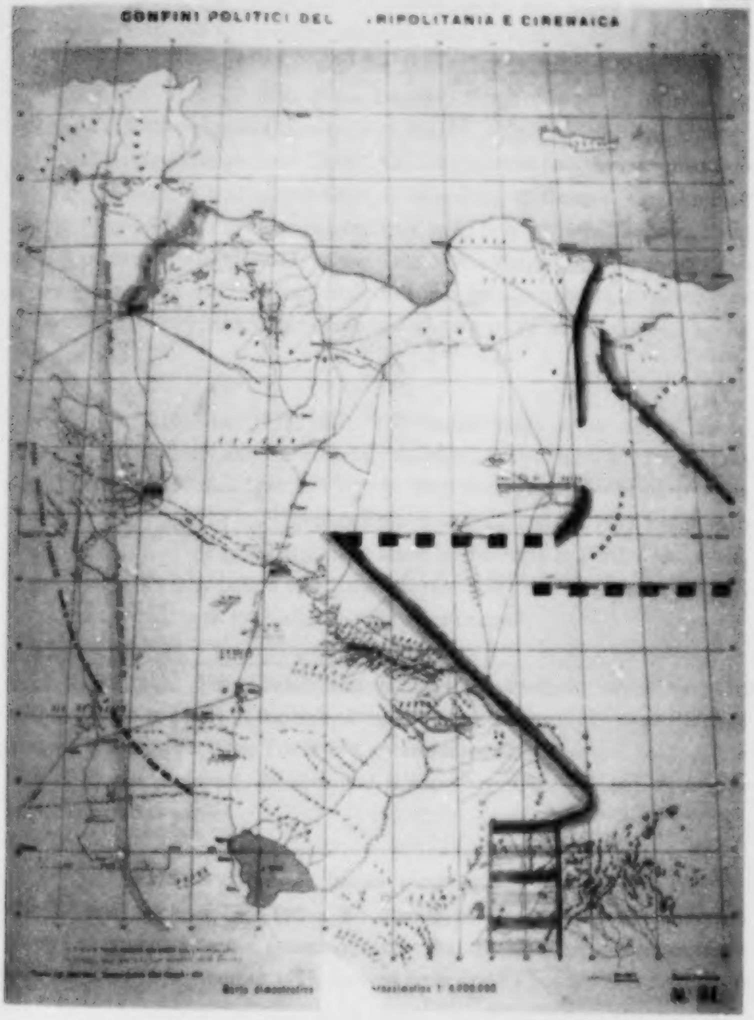

MINISTRY OF FOREIGN AFFAIRS
COLONIAL OFFICE
MINISTERO DEGLI AFFARI ESTERI
UFFICIO COLONIALE
MAP OF THE EUROPEAN POSSESSIONS
AND PROTECTORATES IN AFRICA
CARTA
DEI
POSSEDIMENTI E PROTETTORATI
EUROPEI IN AFRICA
FRANCIA
SPAGNA
MARE
MEDITERRANEO
TURCHIA ASIATICA
ALGERIA
TRIPOLITANIA
SUDAN FRANCESE
AFRICA ORIENTALE

LR 16A-2



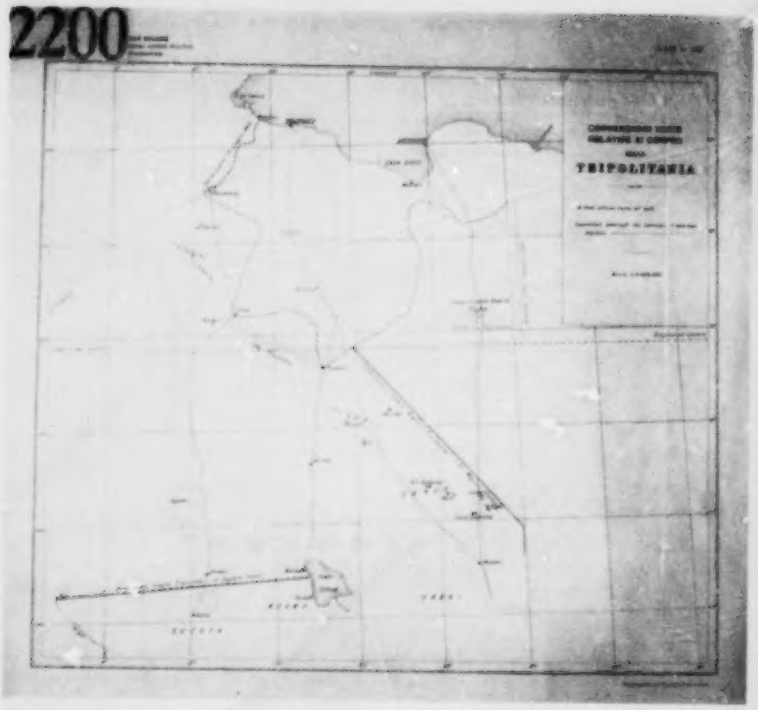
ENLARGED SECTION FROM:
MAP OF THE EUROPEAN POSSESSIONS
AND PROTECTORATES IN AFRICA

TURCHIA
GRECIA
MEDITERRANEE
TUNISIA
Tripoli
Bengasi
CIRENAICA
Alessandria
TRIPOLITANIA
FEZZAN
Murzuk
Tedjerri
DESERTO DI LIBIA
Mathi-el-Senussi
EGITTO
22°
Convenzione Anglo-Egiziana
Anglo-French Convention
21 March 1899
SUDAN ANGLO
TIBESTI
Zona pretesa dalla
Francia e dalla Turchia
Uaniangu
Borku
Agadem
Area claimed by
France and Turkey
KANEM
L. Ciad
UADAI
L. Fitri
Massenia
BAGHIRMI
L. Iro
BORNU
Kuka
Boundary to be defined
DAR FUR
El Fascer
Anglo-French Convention
21 March 1899
NIGER
INGLESI
Agadez
Ghadames
Ghat
Bilma
Kauar
Tummo


CONFINI POLITICI DEL .RIPOLITANIA E CIRENAICA
Carta dimostrativa
approssimativa 1:4.000.000

LR 19C

2200


TRIPOLITANIA

6.115 On the basis of this official Italian map it may be concluded that Italy in 1906 did not consider that any boundaries concerning Tripolitania had been agreed in the 1902 Accord. The map also demonstrates Italy's reliance on the claimed rights and titles of the Ottoman Empire, and it emphasises the area of overlap between Ottoman and French claims to the Tripolitanian hinterland as far south as Lake Chad. Although in 1906 Italy had no sovereign rights in the area, it had expectations of succeeding to those of the Ottoman Empire. The map can be taken as a recognition by Italy (i) of the Ottoman claim and (ii) of the unresolved status of the Tripolitanian hinterland. It refutes any notion that, in the 1902 Accord, Italy in some fashion renounced any future Ottoman inheritance; the map reveals a high degree of Italian interest in the Ottoman claim.

6.116 The 1912 and 1917 Italian maps show as an actual Tripolitanian boundary only the boundary delimited in 1910 between Tripolitania and Tunisia in the Franco-Ottoman Treaty. Both maps also show the parts of the borderlands occupied by the Ottoman Empire in 1912, and the 1912 Italian map shows the extent of the hinterland claim made by the Porte in 1890. Once again, these maps refute any notion that Italy had renounced the Ottoman rights and titles either in 1902 or in 1912, after the Treaty of Ouchy.

6.117 This French and Italian map evidence establishes that neither France nor Italy at the time considered that an agreed boundary existed between Ghadamès and the Tropic of Cancer intersection. This was precisely the view of Messrs. Poincaré, Barrère and Bompard as shown by the diplomatic record referred to earlier.

6.118 The official Italian maps issued in 1916[130], 1926[131], 1939[132] and again in 1941 (after the demise of the 1935 Treaty) uniformly showed no boundary east of Toummo (except that the 1916 map, which preceded the Accord of 12 September 1919, showed no boundary beyond Ghadamès). A reproduction of the 1941 official Italian map, not previously introduced, appears here (Map LR 16D) - no boundary is shown east of Toummo[133].

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[130] See, LM, Maps Nos. 54, 55, 56, and 57 the officially published Italian maps, on which Italy's alternative programs were depicted.

[131] Map LC-M 52.

[132] Map LC-M 54.

6.119 One of the most legally significant events concerning maps occurred in 1930, and is briefly referred to in the LM under the heading "Italian School Map Incident"[134]. It is discussed, together with the relevant documents, in Supplementary Annex, No. 5.10, hereto. Contrary to the incorrect assertion in the CC-M that during this period there was no "contestation cartographique" between Italy and France[135], that is exactly what this incident was - and at the highest diplomatic level: a formal protest by France's Ambassador in Rome to the Italian Ministry of Foreign Affairs. Following the protest, the Italian school map, which had shown a southern Libyan boundary area running south of Tibesti - a colour version of this map recently found in the Italian archives is reproduced as Map LR 16E and may be found at paragraph 6.202 below - reverted to showing no boundary east of Toummo, and France raised no objection to these revised maps. The School Map incident also shows how absurd is the notion of a "mock war" between the Italian Ministry of Colonies and the Ministry of Foreign Affairs invented in the CC-M, by which Chad seeks to brush aside the officially-published Italian maps. The School Map Incident concerned the Italian Ministry of Foreign Affairs directly, not supposed colonial extremists in the Ministry of Colonies. It was the Italian Foreign Minister who instructed that Italian maps conform to the consistently followed policy of the Italian Government of showing no boundary east of Toummo.

(B) Impending Negotiations (1912-1914): Between France and the Ottoman Empire and, then, France and Italy

6.120 There is no clearer evidence in the conduct of France that Libya's boundary beyond the end point of the 1910 boundary at Ghadamès required to be delimited, than the plans made for delimitation negotiations for this very purpose, first with the Ottoman Empire and, then, with Italy[136].

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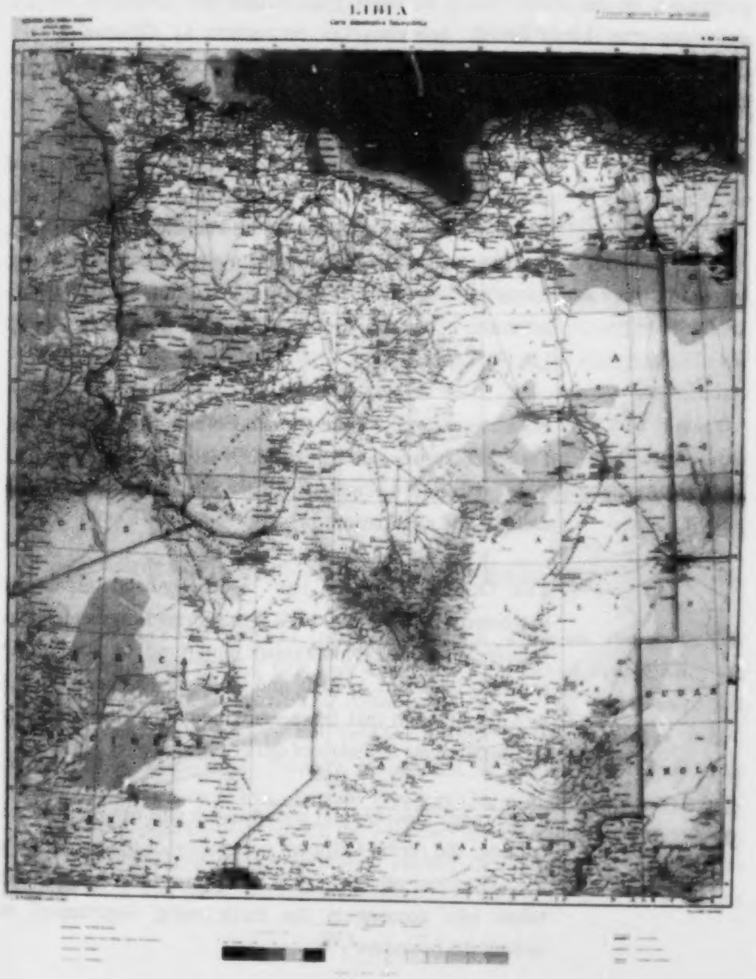
[133] A larger-size copy of this map has been furnished to the Registry.

[134] See, LM, paras. 5.278-5.279 and Maps Nos. 78 and 79. See, also, para. 6.202, et seq., below.

[135] See, CC-M, para. 10.29. The CC-M simply ignores the School Map Incident.

[136] See, LM, para. 5.111, et seq., for a fuller account of these plans. See, also, Supplementary Annex, Nos. 9.6 and 9.8.

LR 16D



6.121 The Franco-Ottoman discussions were the natural outgrowth of the 1910 Treaty between France and the Ottoman Empire delimiting the Libya-Tunisia boundary as far south as Ghadamès, the demarcation of which was completed in 1911. The salient points about them are the following:

- Negotiations were scheduled against a background of Ottoman occupation of the borderlands starting in 1908, with the support of the local tribes and the Senoussi Order, involving the installation of civilian governmental authority, starting in northwest Tibesti and continuing progressively southeast across Borkou and Ounianga into Ennedi (Map LR 17)[137];

- On instructions from the French Foreign Ministry in Paris, French forces remained below 15°N latitude - which became a de facto line - pending the outcome of the forthcoming delimitation negotiations[138];

- The Ottoman Empire had vigorously and repeatedly protested the 1890 and 1899 Anglo-French agreements as transgressing the Tripolitanian hinterland to which they explicitly laid claim in 1890; and the Porte had been assured by Great Britain that these agreements did not affect any territorial rights or claims of third States;

- The French Government stated that it was not prepared to consider the recent Ottoman occupation of the borderlands (i.e., Ottoman effectivités) as an appropriate factor to be taken into account in the forthcoming negotiations to delimit the boundary[139];

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[137] A similar map appeared in the LC-M as Map LC-M 28. See, Supplementary Annex, Nos. 10.2, 10.3, 10.4, 10.9 and 10.10.

[138] See, LM Map No. 34, referred to there at para. 4.120.

[139] See, LM, paras 5.114-5.115 and citations.

- The vilayet of Tripoli proposed a reduction in the 1890 Ottoman hinterland claim as the opening negotiating position of the Porte (Map LR 18)[140]; this proposal clearly reflected the fact of Ottoman occupation in the borderlands and France's observance of a de facto line along roughly 15°N latitude.

6.122 These plans of France and the Ottoman Government to negotiate to delimit the Libyan boundary south of Ghademès establish that no conventional Libyan boundary was considered to exist by either Government beyond that point in 1911-1912. As seen earlier, this was the view of Messrs. Poincaré, Barrère and Bompard in 1912, as well. France's opening position was to base its case on the 1899 Declaration and to reject Ottoman effectivités. In the light of the British assurance to the Porte, the 1899 Declaration would certainly have been a slender reed on which to hang France's claim, for it clearly was not opposable to the Ottoman Empire, which had strongly protested against the Declaration. With the Treaty of Ouchy, the Ottoman Empire was replaced by Italy at the negotiating table.

(C) Franco-Italian Delimitation Negotiations

6.123 It will be recalled that M. Poincaré rather quickly abandoned an idea he had first had when Italy approached France after the Treaty of Ouchy for recognition of Italian sovereignty. This had been to link agreement on the boundary not yet fixed with the recognition of Italian sovereignty. Thus, after France's recognition of Italian sovereignty over Tripolitania-Cyrenaica shortly after the Treaty of Ouchy and the entering into of the 1912 Franco-Italian Agreement, the boundary question remained open. As a result, the two Governments agreed to resolve this question by negotiations between them, and scheduled the initial meeting to take place in Bern on 20 July 1914[141].

6.124 It was at about that time that the 1900-1902 secret Accords between France and Italy became known in France[142]. Prior to then, there had

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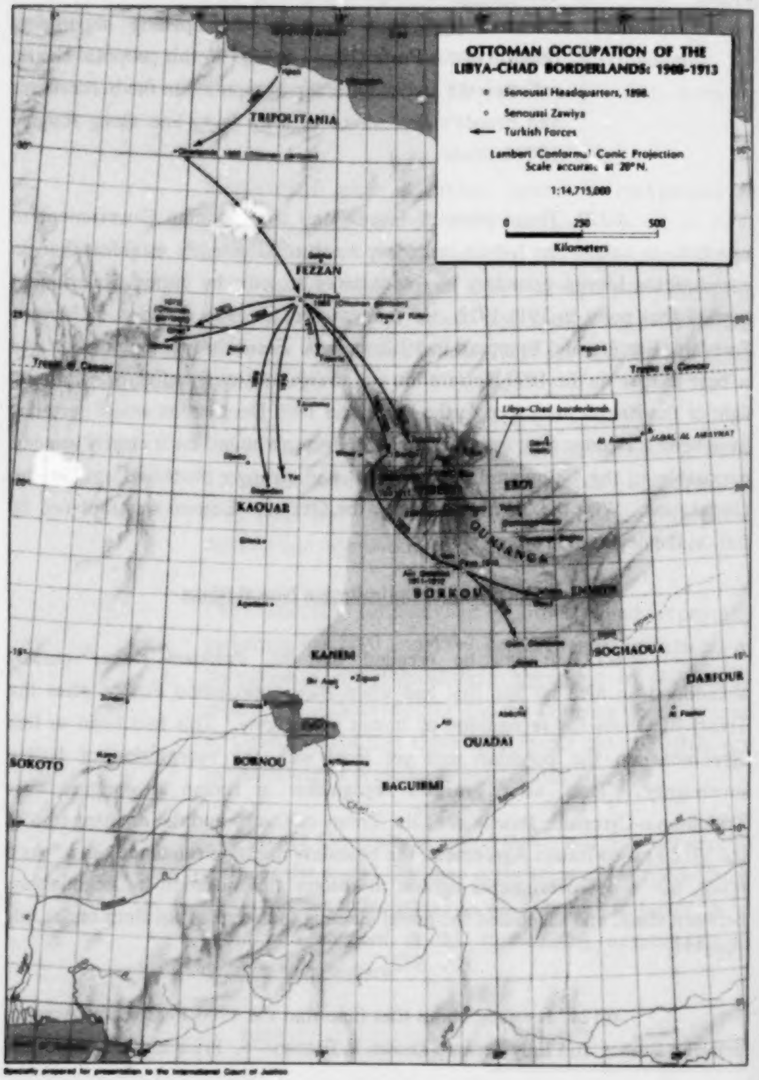
[140] This map appeared in the LM as Map No. 52/B.

[141] See, LM, paras. 5.120-5.121.

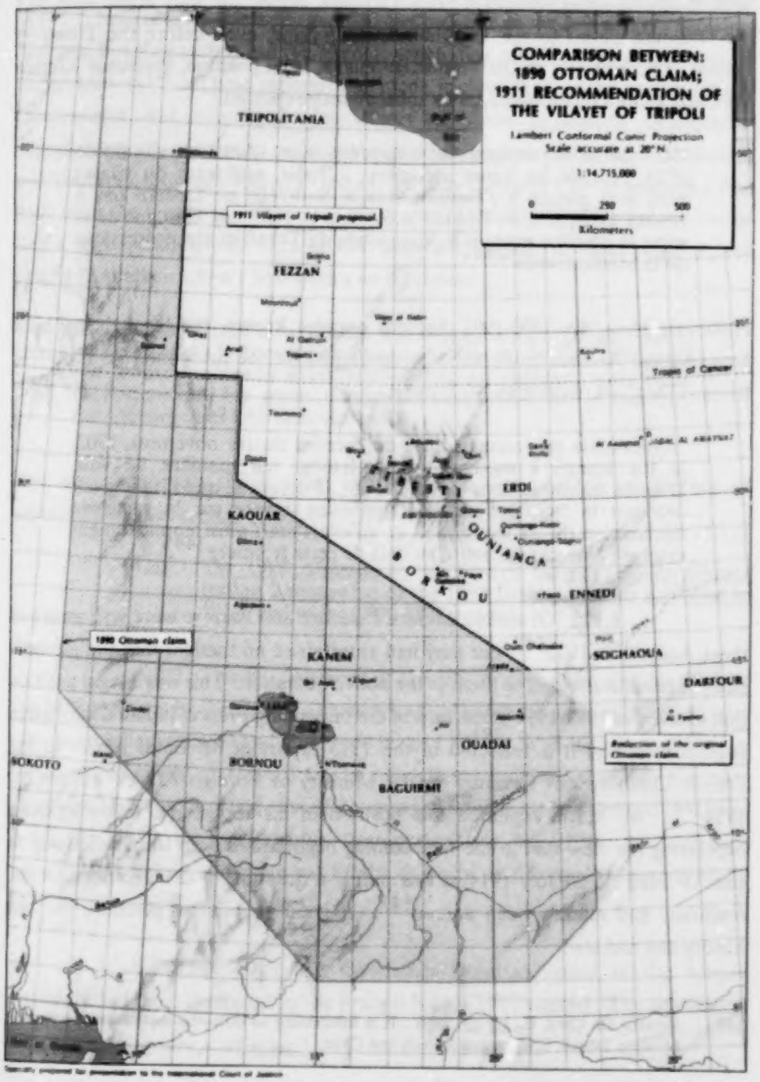
[142] They were not to be officially published by the French Government until 1920, when a Livre jaune containing these documents was issued.

LR 17


OTTOMAN OCCUPATION OF THE LIBYA-CHAD BORDERLANDS: 1908-1913
Senoussi Headquarters, 1898.
Senoussi Zawiya
Turkish Forces
Lambert Conformal Conic Projection
Scale accurate at 20°N.
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
FEZZAN
Tropic of Cancer
Libya-Chad borderlands
JABAL AL AWAYNAT
KAOUAR
ERDI
OUNIANGA
BORKOU
ENNEDI
KANEM
SOGHAOUA
DARFOUR
SOKOTO
BORNOU
OUADAI
BAGUIRMI

Specially prepared for presentation to the International Court of Justice

LR 10


COMPARISON BETWEEN:
1890 OTTOMAN CLAIM;
1911 RECOMMENDATION OF
THE VILAYET OF TRIPOLI
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
1911 Vilayet of Tripoli proposal
FEZZAN
Tropic of Cancer
TIBESTI
ERDI
KAOUAR
OUNIANGA
BORKOU
ENNEDI
1890 Ottoman claim
KANEM
SOGHAOUA
DARFOUR
OUADAI
Reduction of the original Ottoman claim
SOKOTO
BORNOU
BAGUIRMI

Specially prepared for presentation to the International Court of Justice

been mounting apprehension in French colonial circles that Italy would take over the Ottoman claims to the Tripolitanian hinterland, even before the Treaty of Ouchy. The architect of the French colonialist legal position, Professor Rouard De Card, shared this concern, as he subsequently reported:

> "Moi-même je partageai cette appréhension. Aussi, vers la fin de 1905, j'écrivis les lignes suivantes: 'L'Italie, maîtresse du vilayet turc, sera portée à s'étendre vers le Sud; elle ne tardera pas à vouloir accaparer le Tibesti, le Borkou et l'Ennedi, coupant de la sorte la jonction entre nos possessions du Tchad et nos possessions de la Méditerranée'[143]."

However, when the 1900-1902 Accords became known, the legal theory built around these Accords by France was developed for the first time. As Professor Rouard De Card (writing in 1927) put it -

> "Ayant alors pris connaissance de l'accord du 1er novembre 1902, je fus amené à modifier complètement ma manière de voir. D'après les stipulations de cet accord, je constatai que l'Italie avait reconnu la frontière de la Tripolitaine tracée sur la carte de déclaration du 21 mars 1889 et qu'elle s'était ainsi implicitement engagée à ne pas s'étendre au delà de cette frontière[144]."

6.125 Of course, Messrs. Poincaré and Barrère were well aware of these Accords in 1912[145]; but they had entertained no thought that the Accords had the result attributed to them in the above quotation. This was a legal position that evolved in 1913-1914 in the face of the impending Franco-Italian delimitation negotiations; and it is reflected in the 1913 report of M. Louis Marin to the French Chambre des Deputés on the Ministry of Foreign Affairs' budget for 1914[146]. M. Marin repeated this position in his report the following year, expressing the view that in the forthcoming negotiations with Italy, scheduled to start in Bern on 20 July 1914, it was purely a question of demarcation, for the boundary had already been agreed[147]. A good negotiating position, but bad history and bad law!

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[143] Rouard De Card, E., op cit., p. 8. It is interesting to note the distinction made here between Tibesti, Borkou and Ennedi and Chad.

[144] Ibid. Even Prof. De Card qualified his statement: 'implicitement'.

[145] See, para. 6.99, et seq., above.

[146] See, CM, Annex 335.5.

[147] See, CM, Annex 336.1.

6.126 The Marin reports are discussed in some detail in the LC-M[148]. These reports discreetly avoided any mention of the still secret 1900-1902 Accords; but they staked out the French negotiating position with Italy based on these Accords[149]. These reports also made it clear that, so far as the French Government was concerned, the object of these impending delimitation negotiations only concerned the sector of the Libyan frontier between Ghadamès and Toummo, although adding to it the Toummo-Tropic of Cancer segment. The legal basis for France's position was set out by M. Marin, in which he contrasted Italy's legal position with that of the Ottoman Empire in 1911, when it had planned to delimit Libya's boundaries with France:

> "Cependant, l'Italie avait adhéré à la déclaration du 21 mars 1899, additionnelle à la convention franco-anglaise du 14 juin 1898, qui, par la carte annexée à cet accord, fixe ne varietur, mais aussi théoriquement, les zones d'influence respectives des puissances européenes dans l'Afrique du Nord."

This was clearly not the position of the Italian Government on the eve of negotiations as seen, inter alia, from official Italian maps[150].

(D) The 1928 Attempt of the French Government to Obtain Italian Recognition of the 1899 Declaration (as modified in 1919) and of the 1900-1902 Accords

6.127 This final element of French conduct to be discussed here - the 1928 proposal by the French Government to "cede" the oasis of Djado to Italy - has been fully discussed and illustrated in the LM[151]. With its proposal, France tabled a draft treaty, under Article 3 of which it was proposed that Italy expressly recognise as a boundary line east of Toummo the southeast line defined in Article 3 of the 1899 Declaration (as "interpreted" by the 1919 Anglo-French Convention) and as "reconnue par l'Italie en vertu de l'Accord franco-italien du 1er novembre 1902".

6.128 By 1928, the Ghadamès-Toummo sector of the Libyan boundary had been delimited by the Franco-Italian 1919 Accord. The addition of this provision in the draft treaty reveals that the French Government were well aware that east of Toummo there was no conventional boundary, for the 1899-1919 line was not opposable to Italy, and the French argument built around the 1902 Accord required express Italian acceptance to be valid. Thus, the French Government sought to resolve this problem by securing Italy's agreement at the same time as its offer of the Djado salient was agreed. The offer, however, was refused by Italy.

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[148] See, LC-M, para. 4.247, et seq.

[149] The 1914 Marin report directly ties Italy's position concerning Libya's boundaries to its inheritance from the Ottoman Empire.

[150] See, Maps LR 16A-1, 16A-2 and 16B, referred to in para. 6.112, above.

[151] See, LM, para. 5.260, et seq.

SECTION 6. 1915 Secret Treaty of London

6.129 This Treaty is covered in the LM and the LC-M[152], and it crops up, as well, in several parts of this Reply. So only the main points to be borne in mind about the Treaty are set out here. This is another of many important subjects dealt with in the LM to which Chad has not submitted any rebuttal.

6.130 First, the 1915 Treaty of London contained two articles directly relevant to the present case: Article 10, recognizing Italy's inheritance by virtue of the Treaty of Ouchy of the Ottoman Empire's sovereign rights in Libya; and Article 13, under which France and Great Britain undertook to compensate Italy in Africa by "the settlement in her favour of the questions relative to the frontiers of ... [Libya] and the neighbouring colonies belonging to France and Great Britain".

6.131 Second, Article 10 refutes Chad's thesis that Italy, either in the Franco-Italian Accord of 1902 or Agreement of 1912, renounced its Ottoman heritage. Article 10 expressly recognized Italy as successor to the Ottoman rights in respect to Libya, and no reservations were registered by France in respect to the hinterland of Libya to which the Ottoman Empire had asserted a claim as early as 1890 and, over the hinterland region north of approximately 15°N latitude, over which the Ottoman Empire had exercised sovereign authority starting in 1908 until the 1912 Treaty of Ouchy brought about the Ottoman withdrawal from Libya and its hinterland.

6.132 Third, Article 10 had the effect of making the Treaty of Ouchy opposable to France insofar as Italy's sovereign rights to Libya and its hinterland were concerned (as had France's recognition of Italian sovereignty in 1912).

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[152] See, e.g., LM, paras. 5.150-5.155; LC-M paras. 4.147, 4.178, et seq., paras. 6.16-6.19 and paras. 6.36-6.46.

6.133 Fourth, the ordinary meaning of the text of Article 13 of the Treaty reveals that the compensation promised did not necessarily involve the rectification of Libya's boundaries. It encompassed, as well, the settlement of boundary questions in areas where no boundaries existed. Such an interpretation is borne out by the conduct of Italy and France in entering into the Accord of 12 September 1919 under which a boundary between Ghadamès and Toummo was delimited for the first time. Similarly, the 1935 Treaty would have settled the question concerning Libya's southern boundary by agreement on a boundary where one had not previously existed.

6.134 Finally, Italy's right to the unfulfilled obligations of France under Article 13 are part of the territorial inheritance of Libya from Italy and may now be invoked against Chad, which inherited France's territorial obligations.

SECTION 7. 1919 Anglo-French Convention (8 September)

6.135 The effect of the 1919 Convention can be rather simply shown on a map (Map LR 19)[153]. Since this Convention was given a very full analysis in both the LM and the LC-M[154], it is only necessary here to recall the salient points and to rebut the rather cursory treatment of the Convention in the CC-M.

(a) Ordinary Meaning of the Text in its Context and in the Light of its Object and Purpose

6.136 The LC-M subjected the terms of the 1919 Convention to a detailed analysis. It also carefully considered the Convention's context and its object and purpose, leading to a number of conclusions that are important to this case.

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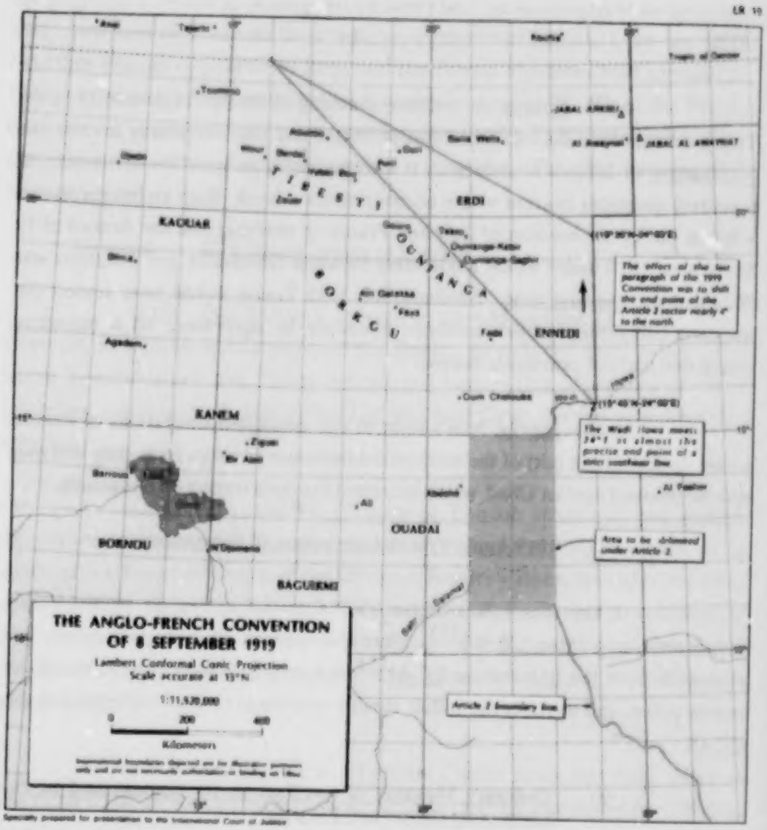
[153] The same map appeared as LC-M 29.

[154] See, LM, para. 5.174, et seq.; LC-M, para. 4.161, et seq.

LR 10


Tropic of Cancer
Tummo
JABAL ARKENU
Sarra Wells
Al Awaynat
JABAL AL AWAYNAT
Aouzou
Bardai
Zouar
T I B E S T I
KAOUAR
ERDI
(19°30'N-24°00'E)
O U N I A N G A
Ounianga Kebir
Ounianga Saghir
B O R K O U
Ain Galakka
Faya
ENNEDI
Agadem
Oum Chalouba
(15°45'N-24°00'E)
KANEM
Ziguei
BORNOU
N'Djamena
Abéché
Ati
OUADAI
BAGUIRMI
Al Fashir
Bahr Salamat
15°
10°
20°
24°

The effect of the last paragraph of the 1919 Convention was to shift the end point of the Article 2 sector nearly 4° to the north

The Wadi Howa meets 24°E at almost the precise end point of a strict southeast line

Area to be delimited under Article 2

Article 2 boundary line

THE ANGLO-FRENCH CONVENTION OF 8 SEPTEMBER 1919

Lambert Conformal Conic Projection
Scale accurate at 15°N

1:11,520,000

0 200 400
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

(i) Text and Context

6.137 It is the final paragraph of the Convention that is directly relevant. Yet it seems to have been added as an after-thought. The Treaty itself was known as the "Ouadaï-Darfour Convention", for it accomplished the delimitation of that part of the boundary not yet fully delimited by Article 2 of the 1899 Declaration. The Exposé des motifs of the 1919 Convention prepared by the French Government did not even mention the last paragraph (which dealt with territory north of 15°N latitude, the sector covered by Article 3, and did not concern a boundary); it discussed only the Ouadaï-Darfour boundary south of 15°N, covered by Article 2.

6.138 As to the object and purpose of the final paragraph, it clearly was to modify the line described in Article 3 of the 1899 Declaration. Unlike Libya's pleadings[155], Chad's pleadings make no attempt to analyse in depth the text of this paragraph in the light of its object and purpose; and what little analysis is undertaken by Chad is incorrect.

6.139 The CC-M sets out the opening phrase of the last paragraph, underlining certain words:

> "It est entendu que la présente Convention ne modifiera en rien l'interpretation donnée à la Déclaration du 21 mars 1899 ...[156]."

(The paragraph then goes on to describe a line running "in a south-easterly direction" from the intersection of the Tropic of Cancer and 16°E longitude to the intersection of 24°E longitude and 19°30'N latitude, referred to in Libya's pleading as the "1919 line".) From this, Chad puts forward the following contentions:

- That the underlined words of the text made clear that the last paragraph did not modify Article 3 of the 1899 Declaration;

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[155] The text of the last para. of the 1919 Convention is comprehensively analysed in the LC-M, starting at para. 4.163.

[156] CC-M, para. 8.120. The English text reads:

"It is understood that nothing in this Convention prejudices the interpretation of the [1899 Declaration]... ."

- That the southeast line described in Article 3, as illustrated on the Livre jaune map, was confirmed by the 1919 Convention (the difference between the Livre jaune map line, ending at 19°N latitude, and the 1919 line, ending at 19°30'N, being negligible[157]).

6.140 Chad has misread the underlined words of the last paragraph. As the LC-M points out[158], these words do not say that this "interpretation" of Article 3 did not modify Article 3; they say that "la présente Convention ne modifiera en rien l'interprétation" ("nothing in this Convention prejudices the interpretation"). The ordinary meaning of these words is that the 1919 Convention did not modify or prejudice an "interpretation" of the southeast line described in Article 3 of the 1899 Declaration that placed the end point of the line at the intersection of 24°E longitude and 19°30'N latitude. But that is quite different from saying that the "interpretation" did not modify Article 3. The last paragraph does not say this, as Chad wrongly argues. As is demonstrated in the LC-M, the text of the "interpretation" set out in the last paragraph modified both the text of Article 3 itself (substituting "shall run thence in a south-easterly direction" for "shall run thence to the south-east") and the direction of the line which, as shown earlier and in the LC-M, was intended to be approximately a true southeast line[159]. The CC-M scolds Libya for ignoring the text of the 1919 Convention; saying that -

> "... il est très remarquable que la partie libyenne n'attache la moindre importance au texte clair de la disposition pertinente[160]."

It is evident that this is not so and that Chad's pleadings reflect its own failure to have examined with sufficient care the text on which its case so heavily relies.

6.141 As is shown in Libya's Counter-Memorial, lines intersecting 24°E longitude at 15°35'N (a true southeast line), at 19°N (the line drawn on the Livre jaune map) and at 19°30'N (the 1919 line) cannot be described as the same line, and to detect the difference between them does not require extraordinarily

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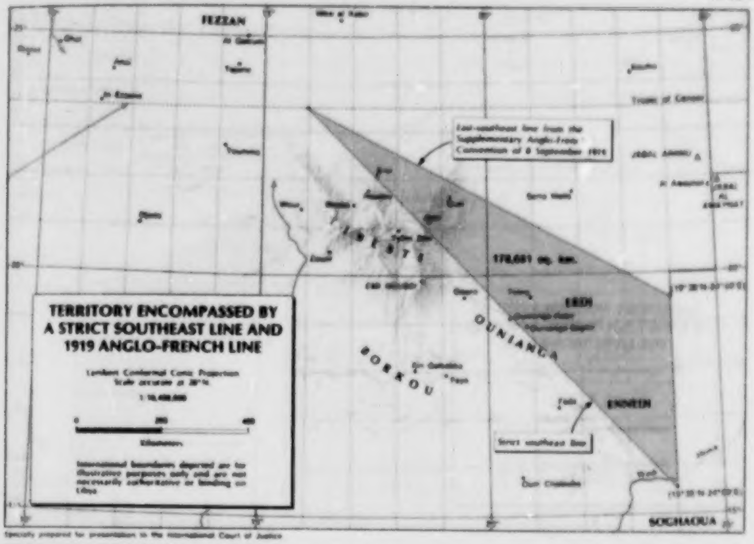
[157] As Chad puts it: "Il faut, à vrai dire, de très bons yeux" to tell the difference between the lines.

[158] See, LC-M, para. 4.168.

[159] See, para. 6.11, et seq., above.

[160] CC-M, para. 8.116.

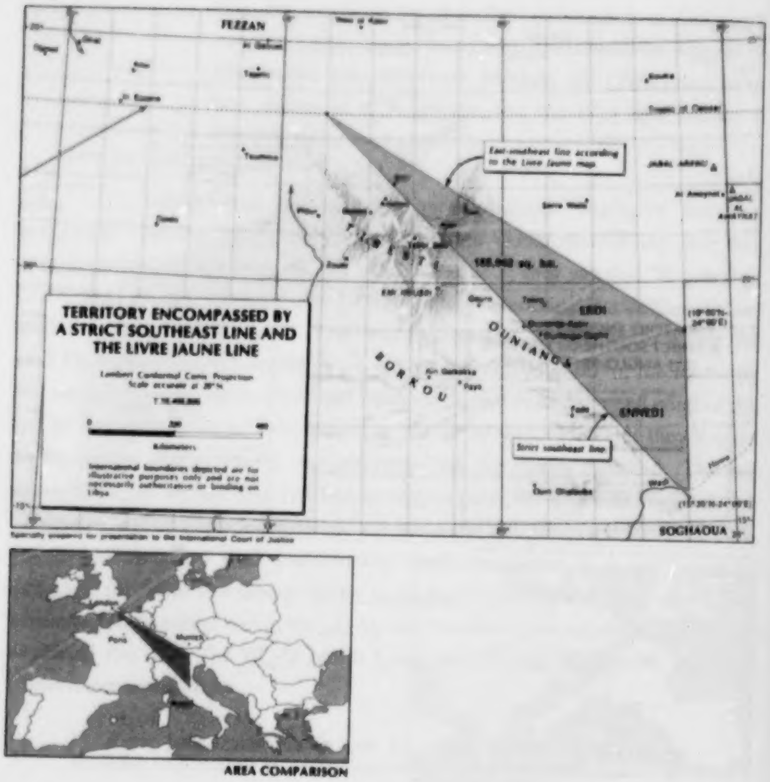
LR 20A


FEZZAN
Tropic of Cancer
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
TIBESTI
OUNIANGA
BORKOU
ERDI
ENNEDI
Strict southeast line
SOGHAOUA
TERRITORY ENCOMPASSED BY A STRICT SOUTHEAST LINE AND 1919 ANGLO-FRENCH LINE
Lambert Conformal Conic Projection
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

AREA COMPARISON

LR 208



FEZZAN
Tropic of Cancer
JABAL ARKENU
JABAL AL AWAYNAT
East-southeast line according to the Livre Jaune map
TIBESTI
185,002 sq. km.
ERDI
OUNIANGA
BORKOU
ENNEDI
Strict southeast line
(19°30'N-24°00'E)
(15°35'N-24°00'E)
SOGHAOUA
Paris
Munich
London
Rome

TERRITORY ENCOMPASSED BY A STRICT SOUTHEAST LINE AND THE LIVRE JAUNE LINE

Lambert Conformal Conic Projection
Scale accurate at 20°N

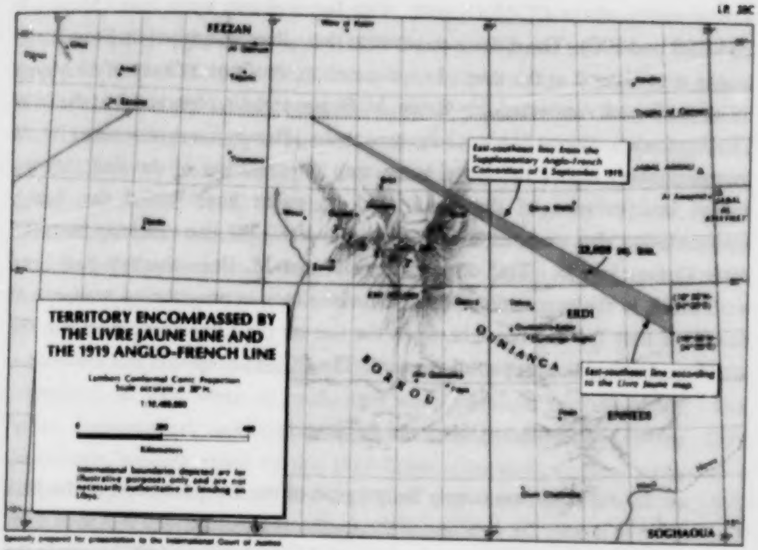
0 200 400
Kilometers

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya

Specially prepared for presentation to the International Court of Justice

AREA COMPARISON

LR 28C



TERRITORY ENCOMPASSED BY THE LIVRE JAUNE LINE AND THE 1919 ANGLO-FRENCH LINE

Lambert Conformal Conic Projection
Scale accurate at 20°N.

International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

Specially prepared for presentation to the International Court of Justice

FEZZAN
Tropic of Cancer
East-southeast line from the Supplementary Anglo-French Convention of 8 September 1919
22,000 sq. km.
ERDI
OUNIANGA
BORKOU
East-southeast line according to the Livre Jaune map.
ENNEDI
SOGHAOUA
0
200
400
Kilometers

AREA COMPARISON

keen eyesight, as the CC-M suggests. This fact is shown again here (Maps LR 20A, 20B and 20C). The difference between these lines was noted on French and Italian maps issued at the time. In a dispatch to the Quai d'Orsay of 11 March 1930, the French Ambassador in Rome, M. Beaumarchais, observed that the 1899 Declaration's southeast line was subject to three different interpretations: (i) "our interpretation", that is the Livre jaune map intepretation of the line; (ii) the Italian interpretation of the line - and he might have added the British interpretation also - a strict southeast line; and (iii) the line resulting from the 1919 Convention[161]. This dispatch reveals that M. Beaumarchais had been authorized, in the negotiations with the Italians then in progress, to renounce in favour of Italy the difference between the line on the Livre jaune map and the 1919 line, but had not yet played this card. The CC-M just ignores this evidence.

(ii) Object and Purpose

6.142 It was clearly the purpose of the last paragraph of the 1919 Convention to modify the direction of the southeast line described in Article 3, for it had the effect of pushing northward by 4° of latitude along 24°E longitude the Article 2 boundary (Map LR 19 referred to above at para. 6.135). Both Great Britain and France had come to realize that the Article 3 line, which was based on the geography as understood from the maps in 1899, did not follow a course that would leave on the southwest side of the line all of the regions intended when considered in the light of the more accurate maps available in 1919. This is brought out by the travaux, particularly certain documents introduced by Chad[162]. Great Britain was content to make this change both in the end point of the Article 2 boundary (at 19°30'N) and the consequent change in direction of the southeast line because it left the French with the problem of the unruly tribes in the area[163].

6.143 Why then, it may be asked, was the last paragraph so curiously framed - as an "interpretation" of Article 3 of the 1899 Declaration, when it was so obviously intended to be a modification of the Article? Although there is no direct evidence on the point, the answer is apparent: Great Britain and France had not discharged their obligations to Italy under Article 13 of the 1915

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[161] See, LM, para. 5.271, and French Archives Annex, p. 391.

[162] See, analysis in LC-M, para. 4.178, et seq.

[163] See, LC-M, paras. 4.173 and 4.188.

Treaty of London, as was acknowledged in the 1919 Peace Congress. If the modifications brought about by the 1919 Convention could be dressed up as an "interpretation" of the 1899 Declaration, then Italy could be disregarded in spite of Article 13; and should Italy complain later, the parties to the Convention could pretend that really nothing had been changed, only "interpreted". Four days after the 1919 Convention was signed (8 September), French Foreign Minister Pichon signed the Accord of 12 September 1919 between Italy and France, which concerned Libya's boundary with Algeria between Ghadamès and Toummo. Not a word was mentioned to Italian Foreign Minister Bonin of the Anglo-French Convention signed four days earlier by the same M. Pichon.

6.144 Of course, the scheme was a bit naïve; Italy learned of the Convention in 1921 when its ratification was authorized by French law. The Italian Government immediately perceived the modification in the 1899 Declaration brought about by the 1919 Convention and protested, refusing to accept its application to Italy, and continued to protest right up until the 1935 Treaty was entered into between Italy and France[164].

6.145 The following conclusions may, therefore, be drawn from the terms of the last paragraph of the Convention, viewed in context, and in the light of its object and purpose:

- This "interpretation" was intended to modify the direction of the southeast line of Article 3 of the 1899 Declaration;

- The 1919 line did not correspond at all to the Article 3 line on the Livre jaune map line;

- The effect of the "interpretation" was to extend the Article 2 north/south boundary, as between Great Britain and France, north along 24°E longitude to 19°30'latitude;

- Italian interests were ignored by Great Britain and France, in violation of their obligations to Italy under Article 13 of the 1915 Treaty of London.

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[164] The Italian protests and the British and French responses thereto are dealt with in Section 10, below.

(b) Non-opposability of the 1919 Convention to Italy

6.146 It is obvious on the face of it that a line agreed between Great Britain and France in 1919, which substantially modified a line established in 1899, could not be opposable to Italy - even if, as Chad wrongly contends, Italy in 1902 had accepted the 1899 line[165]. Great Britain and France could not modify the juridical situation of Italy resulting from the 1902 Accord without Italy's consent[166].

6.147 To attempt to get around this difficulty, Chad advances several arguments, the first being that the 1899 and 1919 lines were really the same line. The substantial difference in the direction of the lines has already been illustrated; and the invalidity of Chad's attempt to use the Livre jaune map in order to swing the end point of the 1899 southeast line from 15°45'N to 19°N has also been shown[167].

6.148 There is, as well, another aspect to the 1919 line - one which the 1924 Protocol and Declaration formalized[168]. The 1919 Convention had the effect, not explicitly stated in its final paragraph, of shifting north, from approximately 15°45'N (the end point of a strict southeast line at its intersection with 24°E) to 19°30'N, the northern limit of the Article 2 boundary. Thus, the 1919 Convention brought about not only a substantial change in the direction of the 1899 southeast line - which was not intended by the parties to the Declaration to be a boundary - but also a major shift northward of the north/south Article 2 boundary. Not only this, but after 1919, the French contended that even the 1919 southeast line was a boundary - a proposition consistently rejected by Great Britain as well as Italy.

6.149 This second aspect of the 1919 Convention adds to Chad's problems . To overcome this hurdle, Chad again relies on the Livre jaune map which was referred to in the 1902 Franco-Italian Accord. And the CC-M introduces another argument. Evidently, to rely entirely on this map, misrepresented as having been annexed to the 1899 Declaration, must have seemed too risky. This second argument is expressed this way:

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[165] See, para. 6.42, et seq., above, and references there to the LM and LC-M, for the reasons why Chad's thesis concerning the 1902 Accord is wrong.

[166] See, LC-M, para. 4.198. Chad has tried to side-step this critical legal problem in its case by trying to find various kinds of Italian acquiescence in the 1919 line.

[167] See, para. 6.11, et seq., above, and references there to the LM and LC-M.

[168] The 1924 instruments are discussed in Section 9, below.

> "Et, de toutes manières, tant la carte que les accords de 1899 et 1919 concernaient exclusivement les relations franco-britanniques; l'Italie pour sa part avait par l'échange de letters de 1902 reconnu à la France le droit de développer sa sphère d'influence dans toutes les régions situées au-delà des frontières de la Tripolitaine-Cyrenaïque[169]."

As already discussed, this new argument is based on the negligent misreading of the first paragraph of the 1902 Accord (substituting "sousmentionées" for "susmentionées") and must be rejected[170].

6.150 Chad's reliance on the Livre jaune map to attempt to establish Italy's acceptance in 1902 of the continuation of the Article 2 boundary north along 24°E to 19°N is based on the fact that the map shows the east-southeast line descending from the Tropic of Cancer "en pointillées", whereas the north/south line along 24°E ending at 19°N is shown on the map "en trait plein"[171]. Thus, according to Chad, Italy accepted this line as a boundary in 1902.

6.151 This is a preposterous argument. The 1902 Accord referred to the map in these words:

> "... par la limite de l'expansion française ... on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration ... ."

The wavy, dashed line on the map indicating the notional boundary of Tripolitania lay hundreds of miles to the northwest - on the other side of the borderlands - of the solid, north/south line on the map running north along 24°E to 19°N (Map LR 21). The 1902 Accord clearly had nothing to do with that line, a fact brought home by the fact that, whereas the 1900 Accord referred to the limit of French expansion in relation to "Tripolitaine-Cyrénaïque", the 1902 Accord talked only of the Tripolitanian boundary, shown notionally on the map. There is

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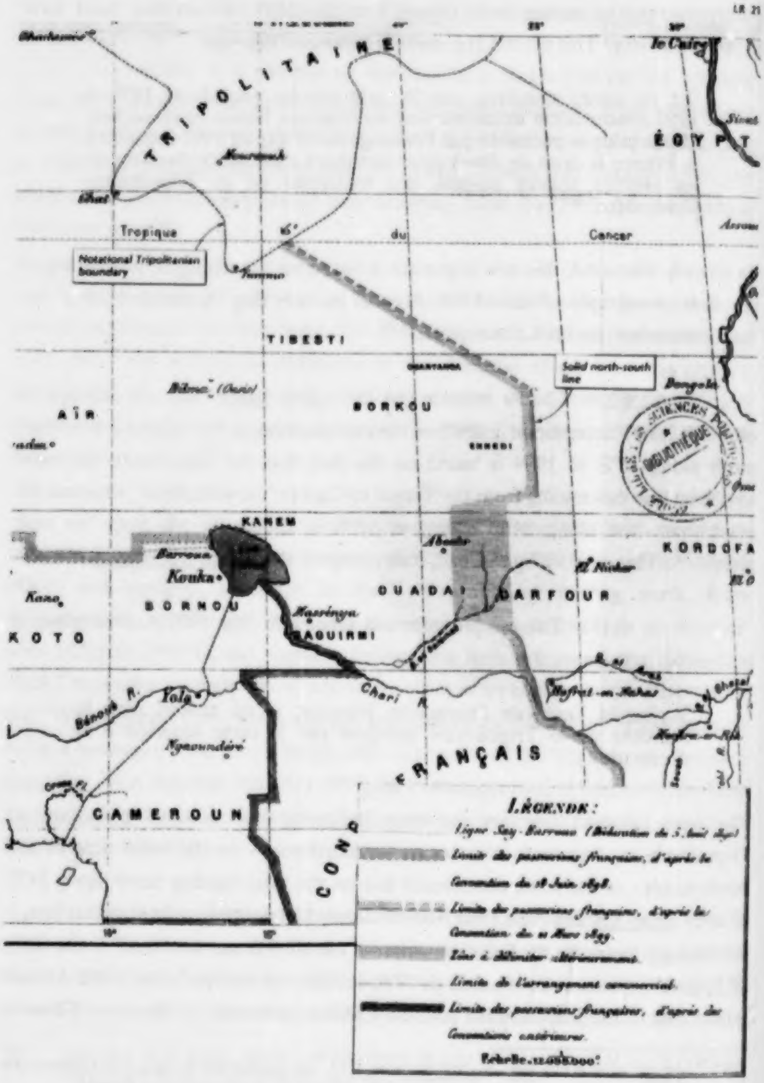
[169] CC-M, para. 8.140; see, also, CC-M, para. 8.37. As pointed out in para. 6.151, below, the 1902 Accord, unlike the 1900 Accord, referred only to the Tripolitanian frontier.

[170] See, paras. 6.50 and 6.66, above.

[171] CC-M, para. 8.130. Actually, the east-southeast line is shown as a dashed line not a dotted line. See, LM, paras. 5.205-5.206, for a discussion of this same argument as set out in an internal French note of 8 December 1992.



LR 21
Ghadamès
TRIPOLITAINE
Mourzouk
Ghat
Tropique du Cancer
16°
Notational Tripolitanian boundary
Tummo
le Caire
Siout
ÉGYPTE
Assouan
TIBESTI
OUANYANGA
Solid north-south line
Bilma (Oasis)
BORKOU
AÏR
ENNEDI
Dongola
KANEM
Barroua
Kouka
Abeche
El Fâcher
KORDOFAN
Kano
BORNOU
OUADAÏ
DARFOUR
Massénya
BAGUIRMI
KOTO
Yola
Bénoué R.
Chari R.
Hofrat-en-Nahas
Ngaoundéré
FRANÇAIS
CONGO
CAMEROUN
10°
15°
20°
25°
30°
LÉGENDE:
Ligne Say-Barroua (Déclaration du 5 Août 1890)
Limite des possessions françaises, d'après la Convention du 14 Juin 1898.
Limite des possessions françaises, d'après la Convention du 21 Mars 1899.
Zône à délimiter ultérieurement.
Limite de l'arrangement commercial.
Limite des possessions françaises, d'après des Conventions antérieures.
Echelle 1:12.000.000

SCIENCES POLITIQUES BIBLIOTHÈQUE

just no connection at all between the wavy, dashed line and the straight north/south line. Moreover, several renditions of the Livre jaune map in Chad's Map Atlas show both the north/south and southeast lines as solid lines (Maps 10, 13 and 14), indicating that there was no significant difference between the two types of lines, and the legend of the authentic Livre jaune map (see, Map LR 12B, referred to in paragraph 6.54 above) makes no distinction between a solid and a dashed line: both are wrongly described as "limite des possessions françaises, d'après la Convention du 21 Mars 1899".

6.152 Official maps of Italy and Great Britain issued between 1899 and 1919 show the 1899 line as a strict southeast line - there is only the tiniest north/south segment on these maps running north of 15°N along 24°E longitude[172]. If Italy recognized the 1899 line in the 1902 Accord - which it is clear Italy did not - then it was a strict southeast line that it recognized, a line that indicated the limits of French expansion not a boundary line. This accorded with the British view.

(c) The 1919 Line in the Light of Article 3 of the 1955 Treaty

6.153 Chad mentions that none of the above really matters since the renvoi in Article 3 of the 1955 Treaty ipso facto was a recognition by Libya and France of the 1919 line as the part of the boundary between Libya and what is now Chad, east and south of the point of intersection of the Tropic of Cancer and 16°E. However, the CC-M contends that, either by itself or as a result of the Article 3 renvoi, the 1919 Convention established this part of the boundary between Libya and Chad:

> "Tel est le tracé de la frontière. Il vaut par lui-même. Il vaut par le renvoi que fait à cette disposition l'annexe I au Traité franco-libyen de 1955[173]."

In other words, under either its first or second theories, Chad contends the 1919 line is opposable to Libya and establishes its southern boundary with Chad, except for the segment to the west of the intersection of the Tropic of Cancer and 16°E[174].

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[172] See, paras. 6.37 and 6.112, above, and the British and Italian maps there referred to.

[173] CC-M, para. 8.117.

[174] This boundary segment will again be taken up below.

6.154 Chad's first theory, under which Article 3 and Annex I of the 1955 Treaty themselves establish the boundary, has already been dealt with in Chapter V above, where it is shown that Article 3 cannot be so interpreted - and Annex I, of course, did not operate independently of the criteria set out in Article 3. Therefore, it is appropriate to consider the application of Chad's second theory to the 1919 Convention.

6.155 Under the criteria of Article 3, did the parties to the 1955 Treaty recognize the 1919 line as the southern boundary of Libya? This requires the following questions to be answered in the affirmative:

- Did the 1919 Convention fall within the category "actes internationaux"?

  Comment: Unquestionably, yes.

- Was the 1919 Convention "en vigueur" on the critical date?

  Comment: Chad has not established this to have been the case. Libya has no knowledge whether or not it was in force then, but since Chad contends that the Convention establishes a large part of its boundary with Libya, this is a fact for Chad to prove.

- Did a boundary result from the 1919 Convention that was opposable to Italy and, accordingly, opposable to Libya on the critical date?

  Comment: Clearly not. If Italy recognized any line at all - which Libya denies Italy did - it was the 1899 strict southeast line not the 1919 line, which it vigorously, consistently and continually protested in formal diplomatic notes from the moment the Convention came to its attention in 1921 until 1935, when Italy and France reached a settlement of this boundary question.

  Further Comment: But even if Italy recognised the strict southeast line of the 1899 Declaration it did not recognize it as a boundary line but only as a line limiting French expansion. Italy recognized no line running north of the end point of a strict southeast line (approximately 15°35'N) along 24°E longitude as a boundary of any kind.

Thus, under the principle uti possidetis juris, on the critical date (the date of Libya's independence on 24 December 1951) no boundary resulted from the 1919 Convention that was opposable to Libya.

6.156 Chad's second theory, however, contains an additional element: French colonial effectivités, which it argues converted a line delimiting zones of influence into a boundary line by 1919. Chad argues further that Italy acquiesced in that boundary, and that Chad's boundary, at least as far north along 24°E as 19°30'N (said to be a tripoint between the boundaries of Chad, Sudan and Libya), was officially recognized by Great Britain in 1924. Since these arguments have been discussed at length and disposed of in Libya's prior pleadings as well as in this Reply, they can be dealt with here in summary form:

- French colonial effectivités were ruled out by Article 3 as a criterion in identifying a boundary recognized by the parties to the 1955 Treaty[175];

- In any event, prior to 1919, the French had not effectively occupied the borderlands up to the 1919 line (or anywhere near it), and, thereafter, any French conquest of the region by force was contrary to international law[176];

- Far from acquiescing in the 1919 line, either in terms of its direction or its purported status as a boundary, Italy protested the 1919 Convention and rejected its application to Italy[177]; Great Britain concurred that the 1919 Convention (to which it was a party) did not and could not affect Italian rights and interests in the area[178];

- Accordingly, under Articles 34 and 35 of the 1969 Vienna Convention, the 1919 Convention could not have had any legal effect on Italy, for Italy had refused to give its consent to that Convention;

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[175] See, para. 4.07, et seq., above, and references there to Libya's earlier pleadings.

[176] See, para. 8.04, et seq., below, and references there to Libya's earlier pleadings.

[177] See, Section 10, below, and references there to Libya's earlier pleadings.

[178] Ibid.

- Furthermore, were the 1919 Convention construed to affect Italian interests it would have produced no legal effect on Italy for another reason: it would have been in violation of the obligations of Great Britain and France to Italy under Article 13 of the 1915 Treaty of London;

- Great Britain did not recognize the north/south line along 24°E to 19°30'N as a boundary opposable to Italy, and in the Italo-Anglo-Egyptian Accord of 1934, Great Britain made it clear that it did not recognize any boundary tripoint at 19°30'N[179].

(d) The Unaccounted For Segment of the Conventional Boundary Claimed by Chad: West of the Tropic of Cancer (and 16°E) to the Border with Niger

6.157 Aside from the numerous other flaws in Chad's arguments based on the 1899-1902-1919 agreements, there is a gaping hole in Chad's case. This concerns the sector of the claimed boundary to the west of the starting point of the 1919 line at the Tropic of Cancer (Map LR 21 referred to in paragraph 6.151). Chad contends that this sector of its claimed boundary with Libya "résulte de trois 'actes internationaux' auxquels renvoie également l'annexe I (of the 1955 Treaty)": the Franco-Italian 1902 Accord, the 1899 Declaration and the Franco-Italian Accord of 12 September 1919[180].

6.158 In so saying, the CC-M paraphrases some, but not all, of the criteria set out in Article 3 of the 1955 Treaty. Conspicuously missing is the criterion that the "actes internationaux" be "en vigueur" on the critical date. Since neither the 1902 nor the 1919 Franco-Italian Accords were in fact "en vigueur" on the critical date, not having been notified by France under Article 44 of the 1947 Italian Peace Treaty, they are excluded from consideration by Article 3 in determining a boundary to be recognised by Libya and France. The renvoi in Annex I to these agreements would thus have no effect at all because the criteria of Article 3 clearly were controlling over this subordinate instrument, Annex I. To construe Article 3 and Annex I otherwise would be to nullify one of the essential criteria of Article 3: "en vigueur" on the critical date.

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[179] See, paras. 6.180 and 9.26, et seq., below.

[180] See, CC-M, para. 8.142.

6.159 But setting aside this point, what about the other criteria of Article 3? Chad is certainly correct that the three agreements it refers to, from which this segment of the claimed boundary allegedly results, were "actes internationaux". But did such a boundary result from them? And was that boundary opposable to Italy and, hence, to Libya on the critical date?

- As to the 1902 Accord, it is clear that no boundary at all resulted from this instrument: Italy had no status in 1902 to agree a boundary, even if in the 1902 Accord it had attempted to do so - which was clearly not the case; the wavy, dashed line on the Livre jaune map encircling Tripolitania and passing from Toummo, through the starting point of the 1899 southeast line, and on to the northeast, was not portrayed as a boundary (despite Chad's presentation in the CM and CC-M of reproductions of the map changing the original maps so as to show this line to be a boundary when it was not)[181];

- As to the 1899 Declaration, it established no boundary north of 15°N; the southeast line described in Article 3 not only was not a boundary line but did not relate to any territory to the west or south of its starting point at the Tropic of Cancer (Map LR 21); moreover, neither Tripolitania nor Cyrenaica are mentioned in the 1899 Declaration - an omission that led to the 1900-1902 Accords, in which Italy sought (and received) reassurance that this region was excluded from the reach of the Declaration;

- As to the Accord of 12 September 1919 between Italy and France, it delimited Libya's western boundary with Algeria between Ghadamès and Toummo, but not beyond; none of that boundary lies between Libya and Chad.

6.160 How does Chad attempt to overcome these obstacles? The CC-M maintains that the 1902 Accord determined "la ligne frontière dans son ensemble" (i.e., between Toummo and the Tropic of Cancer) while the other two agreements "confirment l'emplacement du point de départ et du point d'aboutissement de celle-ci[182]". Briefly stated, this is Chad's line of argument:

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[181] See, para. 6.54, above.

- In the 1902 Accord, Italy and France recognized mutual zones of influence; and by the reference to the Livre jaune map, Italy acknowledged and accepted the Tripolitanian boundary shown on the map, and in particular the segment between Toummo and the Tropic of Cancer[183];

  Comment: The only recognition of a French zone of influence in the 1902 Accord concerned Morocco; the CC-M completely misreads the first paragraph of the Accord (in effect substituting "sous-mentionées" for "susmentionées")[184]; the Livre jaune map did not portray any Tripolitanian boundary, as its legend made clear; it showed by means of a wavy, dashed line a notional frontier for Tripolitania corresponding to that traditionally shown on maps at the time (e.g., the Justus Perthes map of 1892); no agreement of any kind established a Tripolitanian boundary south of Ghadamès prior to 1919[185].

- The Franco-Italian Accord of 12 September 1919 delimited the boundary of Libya as far as Toummo, resulting in two confirmations by Italy:

  > "..; confirmant ainsi que c'est à ce point que la frontière fait un coude pour remonter le nord-est[186].";
  >
  > * * *
  >
  > "en décidant que Toummo constitue le point extrême de l'extension de la Libye vers le Sud-Est, il confirme l'acceptation par l'Italie de la frontière de la Tripolitaine indiquée sur la carte annexée à la Declaration franco-britannique du 21 mars 1899[187]."

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[182] CC-M, para. 8.143.

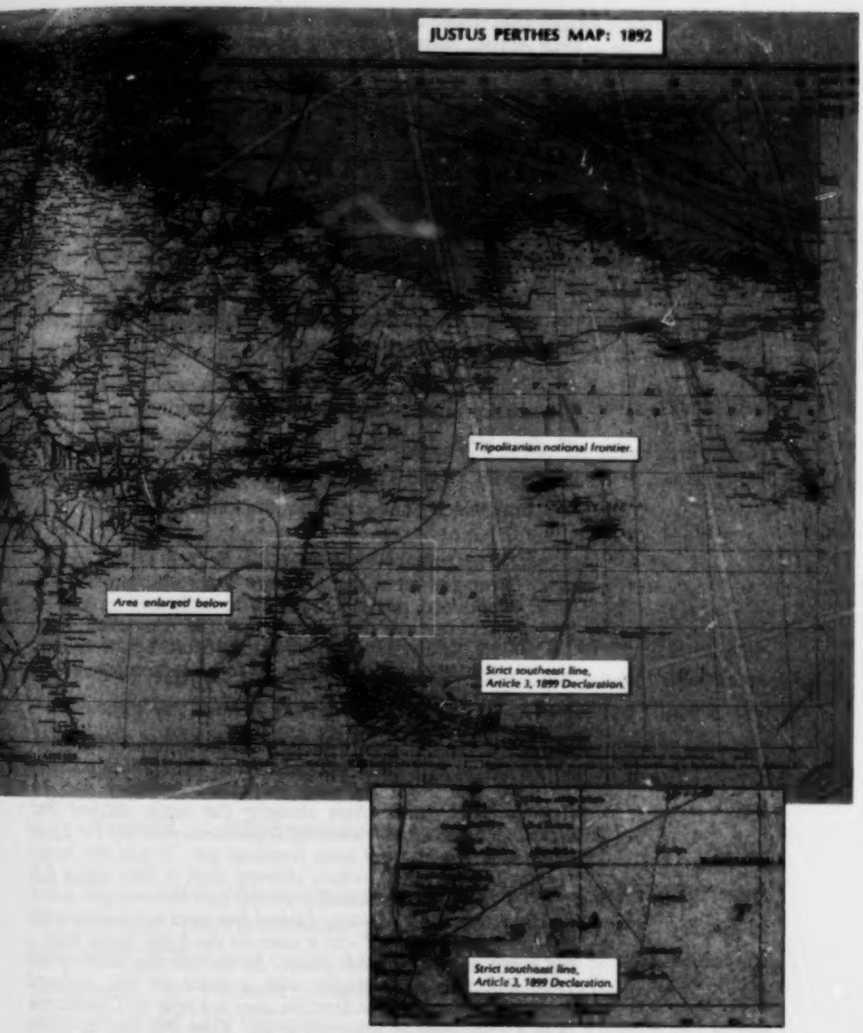
[183] See, CC-M, paras. 8.144-8.160.

[184] See, paras. 6.50 and 6.66, above.

[185] See, para. 6.166, below. See, Maps LR 12A and 12B, referred to in para. 6.54, above, showing how Chad in its pleadings has modified the Livre jaune map by false reproductions that portray the wavy, dashed line as the conventional boundary of Tripolitania.

[186] CC-M, para. 8.161.

[187] CM, p. 203, para. 236.



JUSTUS PERTHES MAP: 1892

Tripolitanian notional frontier.
Area enlarged below
Strict southeast line, Article 3, 1899 Declaration.
Strict southeast line, Article 3, 1899 Declaration.

Comment: These arguments are simply baffling; nothing in the 1919 Accord suggests anything about a boundary continuing beyond Toummo or making a bend to the northeast. And how possibly could Italy's acceptance in the 1919 Accord of Toummo as the terminal point of Libya's boundary thereunder imply the acceptance of the Tripolitania boundary shown on the map "annexed" to the 1899 Declaration? No Tripolitanian boundary was shown on the map (the Livre jaune map - not annexed to the 1899 Declaration) as just discussed above. What connection is there, in any event, between the 1919 Accord and the Livre jaune map, except that the Accord modified the notional boundary shown on the map in Italy's favour both as to the course of the line and as to its legal nature? Finally, a close look at the Livre jaune map shows that the wavy, dashed line does not pass through Toummo at all, but to the south of it (Map LR 21).

- The starting point of the southeast line described in Article 3 of the 1899 Declaraton coincides with the point of intersection of the Tropic of Cancer and the wavy, dashed line, from which Chad concludes the following:

> "Il est très révélateur que la France et la Grande-Bretagne aient fixé ce point à cet endroit: il n'a, à l'évidence, pas été choisi au hasard; ceci montre en effect que ces deux pays avaient la conviction qu'au delà, ils eussent empiété sur les droits appartenant à la Porte puisque ce point est fixé à la frontière même du Vilayet de Tripoli[188]."

Comment: There is not a shred of evidence as to why this point on the Tropic of Cancer was selected as the starting point of the 1899 line. But the map that Lord Salisbury and M. Cambon had before them showing the wavy, dashed line depicting the notional frontier of Tripolitania was not the Livre jaune map - it had not been prepared yet. It was the Justus Perthes map of 1892, which showed such a line (Map LR 13)[189]. If the map is looked at closely (see the enlarged area), it will be seen that the wavy, dashed line does not intersect the Tropic of Cancer at 16° - as it does on the Livre jaune map -, but south and east of that point. So the starting point of the 1899 line does not coincide with a point on this notional boundary. The 1899 Declaration does not refer to Tripolitania or to a Tripolitanian boundary at all. Even if it had, as Great Britain had made clear, the 1899 Declaration was not intended to, and did not infringe on any hinterland rights the Ottoman Empire might have had in the area through which the southeast line passed.

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[188] CC-M, para. 8.165.

[189] See, para. 6.55, above, and Map LR 13, which appears again here. This map appears as Map 2 in Chad's Map Atlas.

6.161 In a rare moment of candor, the CC-M acknowledges that its thesis concerning the claimed boundary segment between Toummo and the Tropic of Cancer may be vulnerable:

> "La République du Tchad ne prétend pas qu'il y ait là une présomption irréfragable en soi[190]."

But it goes on to say that "la Libye n'a pas apporté le début d'une preuve contraire". It is not Libya's task to prove a negative: the non-existence of a boundary in this section; it is for Chad to prove its claim to such a boundary. Libya has demonstrated that Chad has totally failed to do so; and the 1912 French maps demonstrate that France itself did not consider that a boundary existed between Toummo and the Tropic of Cancer[191].

6.162 However, the CC-M asserts that the "caractère irréfragable" of this sector of the boundary it claims -

> "... découle de la double acceptation du tracé de la frontière entre Toummo et le Tropique de Cancer, par l'Italie en 1902; par la Libye elle-même, en 1955[192]."

But where is this "tracé" - this line - to be found? Only on the Livre jaune map. And the line is not shown as a boundary on this map. It was a notional boundary. No boundary was fixed by any agreement between Ghadamès and Toummo until 1919. And there never has been an agreement fixing a boundary east of Toummo.

SECTION 8. 1919 Franco-Italian Accord (12 September)

6.163 After taking up here the other of the two 1919 "actes internationaux", the Franco-Italian Accord of 12 September 1919 , it will be appropriate to turn next to the Anglo-French 1924 Protocol and Declaration demarcating the north/south bundary between Great Britain and France delimited by the 1919 Convention as far north of 19°30'N (Section 9). In this context, the 1934 Italo-Anglo-Egyptian Accord of 1934 will be discussed, as well.

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[190] CC-M, para. 8.169.

[191] See, para. 6.110, above, and Maps LR 15A and 15B.

[192] CC-M, para. 8.169.

Then, in Section 10, the period of protests of Italy against the 1919 Convention, and the extended Franco-Italian negotiations up to 1935, will be dealt with briefly.

6.164 The Accord of 12 September 1919 has been dealt with in detail in the LM and the LC-M[193]. It is one of the "actes internationaux" appearing on the Annex I list. Unlike the 1899 Declaration and the 1902 Accord, this 1919 Accord between Italy and France delimited an international boundary - between Italian and French colonial territories from Ghadamès to Ghat. Thus, to this extent it meets the criteria of Article 3 of the 1955 Treaty. However, it was not a treaty reported by France under Article 44 of the 1947 Italian Peace Treaty and, thus, was not en vigueur on the critical date. It also does not concern territory of direct concern in the present dispute.

6.165 Nevertheless, this Accord has an indirect relevance here for, in the light of its context and travaux préparatoires, it reveals how France and Italy at the time regarded the situation concerning the boundaries between their colonial territories in the region. There are three points to bring out here in illustration of the issues dividing the Parties:

- The Accord fixed Libya's western boundary between Ghadamès and Toummo for the first time;
- It only partially discharged France's obligation to Italy under Article 13 of the 1915 Treaty of London;
- Libya has the right to invoke to its advantage the remainder of France's unpaid debt to Italy.

(a) The 1919 Franco-Italian Accord Fixed the Western Boundary of Libya Between Ghadamès and Toummo for the First Time

6.166 The essential point here is that the French negotiating position, developed in 1913-1914 in preparation for the impending delimitation negotiations with Italy[194], depended on the incorrect assumption that the map referred to in the 1902 Accord contained a line identified as the Tripolitanian boundary. The French thesis was that by referring to the map containing this alleged boundary line Italy accepted the line as an international boundary. This has been the spring-board for Chad's further development of the French thesis. As has been pointed out and illustrated, the wavy, dashed line encircling Tripolitania on the Non-Annexed Map (referred to in 1902) was not a boundary at all, as a proper colour reproduction of that map so clearly shows[195]. Furthermore, Italy and France had no standing in 1902 to agree a boundary; and the 1912 Franco-Italian Agreement had nothing to do with Libya's boundaries[196].

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[193] See, LM, para. 5.168, et seq.; LC-M, para. 4.243, et seq.

[194] See, para. 6.123, et seq., above.

6.167 Thus, France's negotiating position in 1913-1914, reflected in the 1913 and 1914 reports of M. Louis Marin, referred to above[197], would have been an easy target for Italy to attack in these negotiations - had they ever taken place. When Italy and France entered into the 1919 Accord, therefore, they delimited the boundary between Ghadamès and Toummo for the first time, "modifying" what was only a notional boundary shown on a map. This "modification" may well have been thought of by France as a concession of territory to Italy, but in fact it was not - for there had been no conventional boundary between Ghadamès and Ghat. The French Livre jaune map confirms that fact.

6.168 There are several implications to this conclusion. First, the French argument constructed around the reference to a map in the 1902 Accord makes it evident that the Accord concerned only Libya's western frontier, not its southern frontier. Second, the 1919 Accord did not involve a "cession" of territory or a "rectification" of a boundary pursuant to Article 13 of the 1915 Treaty; this was the settlement in Italy's favour of questions relative to the frontier of Libya and neighbouring colonies of France (to paraphrase the text of Article 13). Third, the 1919 Franco-Italian Accord delimited a boundary only as far as Toummo; it had no bearing on a boundary east of Toummo - and hence provides no support for either segment of the line claimed by Chad: Toummo to the Tropic of Cancer (and 16°E); Tropic of Cancer to 24°E (and 19°30'N). Thus, its scope was less than that contemplated in 1914 according to the Marin report, which would have continued the work of the boundary commission as far as the Tropic of Cancer[198].

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[195] See, para. 6.54, et seq., above and Map LR 12B.

[196] See, para. 6.88, above.

[197] See, para. 6.126, above.

(b) The Accord's Relationship to Article 13 of the 1915 Treaty of London

6.169 The Parties are in agreement that, although the 1919 Accord was entered into as a boundary settlement in favour of Italy under Article 13, it was only a partial discharge of France's obligations to Italy under Article 13. The text of the 1919 Accord made this clear[199]. The CC-M readily concedes that the boundary question that remained open was that concerning Libya's southern boundary, which was dealt with in the 1935 Treaty but not resolved[200]. From this, two consequences flow.

6.170 First, the 1919 Accord demonstrates that Article 13 did not concern merely boundary rectifications; as was the case with the Accord, the "equitable compensation" for Italy under Article 13 could equally well have involved a delimitation *ex novo* in favour of Italy's claims, where no prior boundary existed.

6.171 The second consequence is that France acquitted only part of its debt to Italy under the 1919 Accord; and what remained to be paid concerned the determination of Libya's southern boundary. The CC-M explains the situation in these words, in referring to Libya's southern boundary:

> "Dans ces conditions, il n'eût évidemment pas été logique de procéder à la démarcation sur le terrain d'une frontière dont la délimitation devait être modifiée[201]."

This is a clear shift in position by Chad from the CM, where it was denied that the unfulfilled obligations of France necessarily concerned the southern frontier of Libya.

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[198] Ibid.

[199] See, LC-M, para. 6.10, *et seq.*

[200] See, CC-M, para. 8.51. This admission contrasts with Chad's earlier position concerning Article 13. See, CM, p. 202, para. 232.

[201] CC-M, para. 8.51.

6.172 The erratic character of Chad's position is striking. Whilst waiting for the next volte-face, Libya limits itself to the observation that there could have been no question of demarcation along Libya's southern frontier in any event: a demarcation presumes a prior delimitation, and there had been none!

(c) Libya's Right to Invoke France's Unpaid Debt in respect to Libya's Southern Boundary

6.173 In order to put an end to a territorial dispute that France recognised was unresolved before World War II, is it not necessary to take into account all the arguments that were available to France and Italy during the colonial period, including the unpaid obligation to make equitable compensation that France had to Italy?

6.174 Libya has set out in the LC-M its position: that the obligation of France to Italy falls squarely within the purview of Article 11 of the 1978 Vienna Convention[202]. Chad is clearly wrong in arguing that the 1947 Italian Peace Treaty eliminated all remaining obligations under Article 13 of the 1915 Treaty of London. Although Italy certainly lost, in 1947, all the rights Italy might have had in respect to Libyan territory, this certainly did not mean, applying the normal rules of State succession, that Libya, as inheritor of Italy, lost rights that inhered in the territory it inherited from Italy on the date of its independence.

SECTION 9. 1924 Anglo-French Protocol and Declaration

6.175 These agreements were the formal confirmation by the British and French Governments of the demarcation of the boundaries delimited, as between French and British territories, by the 1919 Anglo-French Convention[203]. Thus, the demarcated boundary extended from 11°N latitude to the Wadi Howa (15°40'N), and from there effect was given to the last paragraph of the 1919 Convention, and the boundary was demarcated, from the juncture of Wadi Howa and 24°E north, along this meridian to 19°30'N. As a result, the Article 2 sector of the 1899 Declaration, which (unlike the Article 3 sector) concerned a territorial boundary, was extended north to 19°30'N. This was a north/south boundary between French and British territories and, as such, did not directly affect Italy since it was clearly res inter alios acta.

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[202] See, LC-M, para. 6.36, et seq.

[203] The 1924 Protocol and Declaration are discussed in LM, para. 5.215, et seq.; LC-M, para. 4.203, et seq.

6.176 However, by pushing the boundary north by some 4° of latitude, the 1924 demarcated boundary had the effect of pushing north the end point of the southeast line of the 1899 Declaration, as well, which France also asserted had become a boundary (Map LR 19, at paragraph 6.135, above). This was regarded by Italy as a direct threat to its territorial rights, for it encroached on areas claimed by the Ottoman Empire, whose rights Italy had inherited through the 1912 Treaty of Ouchy. Therefore, Italy protested the 1919 Convention in 1921, when Italy first learned of it; and Italy renewed its protest in 1924 when the Anglo-French Protocol and Declaration were made public.

6.177 In itself, these 1924 instruments did not concern territory now lying between Libya and Chad. However, Chad's contentions as to their meaning and effect have a direct bearing on this case. As has been noted above, these 1924 "actes internationaux" were not included in the Annex I list, although they were mentioned as among the agreements considered relevant to the matter of Libya's southern boundary by France's representative to the U.N. when he corrected the French "bévue", just prior to adoption of the G.A. Resolution 392(V) on 15 December 1950; and they were similarly referred to in Chad's Application formally filed with the Court on 3 September 1990 as among the key agreements to consider[204].

6.178 Chad contends that the 1924 demarcation of this line by the Anglo-French boundary commission (which is illustrated in Chad's Map Atlas by Maps 26 and 27), confirmed by the 1924 Protocol and Declaration, "consacre officiellement la reconnaissance anglaise de la limite Nord-Est du Tchad[205]". The CC-M explains Great Britain's conduct in agreeing to this demarcation in this way:

> "Puisqu'elle considérait que les protestations italiennes étaient sans fondement ... elle procède à la démarcation sur le terrain de la frontière qui sépare le Soudan du Tchad où elle considère que la

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[204] See, LC-M, para. 3.14-3.16.

[205] CC-M, p. 445, commentary on Map 27.

> France est le légitime souverain territorial, conformément aux accords de délimitation antérieurs[206]."

And the CC-M describes the maps issued before and after 1919 showing southern Cyrenaïca and its hinterland in the borderlands, as well as the way in which the delimitation and demarcation operations proceeded, in this way: (i) Italy's rights over Koufra were only recognized in 1924[207], and the Sarra triangle was only "ceded" by Great Britain in 1934; thus the area was a sort of "no-man's land"; (ii) however, after 1919, the east-southeast line between the Tropic of Cancer and 19°30' appeared on all the maps (except for Italian maps which should be ignored[208]); (iii) the 1919 line became a total boundary for France and only a partial boundary for Great Britain; and (iv) only the north/south part of the 1919 delimitation (up to 19°30') was demarcated because from there to the Tropic of Cancer was "un désert pur et simple", and also because, although France was in effective occupation up to the east-southeast line, Great Britain was not.

6.179 This is another analysis that is full of mistakes, as will shortly be shown. It is not hard to guess why Chad follows this line of argument. The 1924 "actes" confirming the 1919 delimitation resulted in a clear distinction being made between the north/south sector (from roughly 15°N to 19°30'N) and the sector defined by the east-southeast line between the Tropic of Cancer (and 16°E) and 19°30'N: the north/south line was demarcated; the east-southeast was not. Chad must somehow explain how both lines, nevertheless, became boundaries as between Great Britain and France, opposable to, or acquiesced in by, Italy.

6.180 The following are among the mistakes in Chad's analysis:

- Great Britain did not give official recognition to the end point of the north/south line demarcated in 1924 as far north of 19°30'N as the "limite Nord-Est du Tchad";

  Reason: The Anglo-French 1919 delimitation and 1924 demarcation up to 19°30' were res inter alios acta; both acts were vigorously protested by Italy, which rejected their applicability to Italy or their effect on Italian rights. In the

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[206] CC-M, para. 8.125.

[207] The year intended to be referred to by Chad is 1925.

[208] See, CC-M, para. 10.29.

1934 agreement between Italy, Great Britain and Egypt concerning the Sarra Triangle, the southern point of the delimitation was fixed at 20°N for the express reason of avoiding any recognition by either Italy or Great Britain of 19°30'N as the northern limit of French territory[209]*;*

- Great Britain's so-called "rejection" of Italy's protests to the 1919 Convention and 1924 instruments (occurring only after 1924) were not a reflection of what Chad claims to have been the British view that Italy had no basis for claims in the area and that France had sovereign title there derived from prior agreements;

Reason: Great Britain's responses to Italy's protests were based on the legal grounds that any Italian rights in the area could not be affected. They were a "rejection" by the British Government of the Italian protests only in the sense that Italy was regarded as not having been injured in any way by not having been consulted in 1919 in connection with the Anglo-French Convention then entered into. Whatever views the British Foreign Office may have had internally of the strength of Italy's claims are of no importance, particularly since they were not the result of a careful study. However, the British Government did make clear that it considered Italian claims to be based on any prior Ottoman rights and titles. And in the 1934 negotiations over the Sarra triangle, Italy made clear this same point. The British Government never recognized French sovereignty to the west of the north/south line delimited in 1919 as far north as 19°30', and demarcated up to that point in 1924; nevertheless, it was able to rationalize its entirely different views from those of the French as to the legal effect of the 1919 and 1924 instruments by referring to its understanding - based entirely on French representations - that France and Italy had entered into a separate agreement (a reference to the 1900-1902 Accords, which the British Foreign Office had not taken the time to study.)

- As to the status of southern Cyrenaica and its hinterland at the time, Italy's interest in Koufra was recognised by Great Britain well before 1924;

Reason: Italy's rights to Koufra were recognised in 1914[210]*. As far as Koufra was concerned, the 1924 agreement was merely a confirmation in treaty form of this prior recognition of Italian rights by Great Britain.*

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[209] For a discussion of the 1934 Exchange of Notes, see, LM, para. 5.284, et seq., and esp. para. 5.299; LC-M, para. 4.230, et seq.; see, also, para. 9.26, et seq., below.

[210] See, LM, para. 5.218.

- The Sarra Triangle was not "ceded" to Italy by Great Britain in 1934;

  Reason: The unfounded nature of this assertion is set out in sufficient detail in the LM and the LC-M as not to require further discussion here[211]*. This matter is also taken up again below in Chapter IX in reference to pre-1945 British conduct*[212]*.*

- The 1919 line did not become a total boundary for France (the north/south segment and the east-southeast line) but only a partial one for Great Britain (the north/south segment).

  Reason: As between Great Britain and France, the north/south line as far north as 19°30'N became a boundary inter se. It was not opposable to third parties (res inter alios acta); and its extension above 15°35' (the terminal point at 24°E of a strict southeast line) was protested by Italy. Great Britain confirmed to Italy the limited legal effect of this line. The east-southeast line between the Tropic of Cancer and 19°30' never became a boundary as between Great Britain and France. The British Government's explanations to Italy made it clear that this line had not changed its character since 1899 - it remained a line only intended as a limitation to French expansion. As a matter of law, this east-southeast line could not have been an international boundary if only because Great Britain did not assert sovereign rights to the north and northeast of the line[213]*.*

- Chad's argument as to why only the north/south line (but not the east-southeast line) was demarcated are easily disproved.

  Reason: Chad advances two arguments: (i) France's effective occupation up to this line had been accomplished by 1919, but not British effective occupation; and (ii) the line crossed a desert "pur et simple". The actual reason for no demarcation of the southeast line is that it had not been delimited as a boundary in 1919, even as between Great Britain and France. As to the desert argument, it would be hard to distinguish, north of Wadi Howa, between the areas of desert covered by

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[211] See, LM, paras. 5.284-5.303; LC-M, paras. 4.230-4.242.

[212] Starting at para. 9.19, below; see, esp., paras. 9.26-9.28.

[213] In any event, any sovereign rights there would have been for Egypt to assert.

> *the north/south line and those along the east-southeast line. They were both desolate regions of desert*[214].

6.181 Libya considers that the 1924 "actes internationaux" are relevant to the present case in two respects: first, the omission of the 1924 arguments from the list set out in Annex I of the 1955 Treaty reveals that the list was not intended to be exhaustive and had only the limited effect of setting out a partial listing of the agreements for Libya and France to consider when they sat down to negotiate Libya's southern boundary, for the 1924 "actes" were certainly highly relevant in the opinion of France (and now of Chad); second, the demarcation of the north/south segment but not the east-southeast segment was an indication that, even as between Great Britain and France, the east-southeast segment had not been delimited as a territorial boundary.

SECTION 10. Period of Italian Protests, Anglo-French Replies and Franco-Italian Proposals and Negotiations: 1919-1935

(a) Introduction

6.182 The discussion here will, again, be of a summary nature, directed largely at contentions set out in the CC-M, since the events of this period have been carefully examined in the LM and LC-M[215]. But it must be emphasised that many of these events have a special importance, for they led directly to the boundary settlement reached between Italy and France set out in the 1935 Treaty.

6.183 It is interesting that the CC-M deals with the Italian protests starting in 1921 as subsequent conduct in relation to the 1912 Franco-Italian Agreement when, in fact, they were directed at the 1919 Convention[216]. The thesis Chad advances is expressed in this way:

> "Un examen minutieux de l'attitude que l'Italie adopta au fil des années au sujet de la frontière meridionale de la Libye montre

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[214] See, dispatch of Lord Allenby of 4 December 1919 quoted in CC-M, para. 8.54 (and taken from CM, Annex 96):

"To the north of Wadi Howa (...) the French sphere is here bounded to the East and North by sheer desert, and consequently the matter (la délimitation envisagée) is susceptible of some delay."

[215] See, LM, paras. 5.188-5.214; LC-M, paras. 4.203-4.229.

[216] The 1912 Agreement is discussed above, starting at para. 6.84. The Italian protests are discussed in the CC-M in both Chapters 7 and 8 (starting at para. 8.57).

> clairement que, - malgré les efforts des milieux colonalistes italiens, dont se faisait l'écho le Ministère Italien des Colonies, visant à insister sur les droits successoraux de l'Italie à la Turquie -, le Ministère des Affaires étrangères italien demeura ferme dans son 'attachment' aux accords de 1902 et de 1912. Autrement dit, quand l'Italie decida de protester, entre 1921 et 1934, contre l'occupation effective, par la France, de la région au sud de la frontière de 1899/1919, elle fonda ses protestations sur le prétendue violation, par la France, de ses engagements contractuels avec l'Italie, et non pas sur d'éventuels droits de succession de l'Italie[217]."

Chad finds this supposed attitude of the Italian Government expressed at three levels: (i) in the official exchanges between the Italian and French Governments; (ii) in the 1919 Tittoni speech to Parliament, once again totally misdescribed as "declarations solennelles devant le Parliament italien[218]"; and (iii) in internal dispatches of the Italian Government.

6.184 There are several comments to be made straight off about the two sentences quoted above. First, as will become more evident as other passages of the CC-M are examined, Chad confuses Italy's protests against the 1919 Convention with its territorial claims. Second, Chad confuses Italy's protests against the 1919 Convention (and the subsequent 1924 demarcation north to 19°30'N) with its protests against France's incursions north of the strict southeast line described in Article 3 of the 1899 Declaration; and these protests were not against France's effective occupation, as Chad suggests, but against its incursions north of a strict southeast line. It was not until after 1930 that French troops went north of a strict southeast line to establish military installations[219]. Third, none of the official or internal dispatches, or even M. Tittoni's speech, contained a word about the 1912 Agreement. Fourth, these sentences, quoted above, reflect an attempt in the CC-M to create what will be called here a "mock war" between the Italian Ministry of Foreign Affairs and the Ministry of Colonies, when in fact the two Ministries were working together in harmony.

6.185 What Chad is attempting to do is to find support for its contentions built around the 1900-1902 Accords and the 1912 Agreement - which are so important to Chad's case - in the conduct of Italy after 1919, when it protested the 1919 Convention, when it protested French military incursions north of a strict southeast line and during negotiations with France concerning Libya's southern boundary in the period up to 1935. It bears repeating that in none of the records of diplomatic notes and internal dispatches is there any reference to the 1912 Agreement. This should come as no surprise; at the time, it was obvious to both the Italian and French Governments that the 1912 Agreement had nothing to do with Libya's boundaries. At the same time, Chad appears to be trying to divert attention from the fact that the 1919 Convention between Great Britain and France was forcefully, consistently and continually protested by Italy and rejected as not opposable to Italy.

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[217] CC-M, para. 7.37.

[218] This is a reference to a few words in a speech by Foreign Minister Tittoni to the Italian Parliament on 27 September 1919 on the subject of the Franco-Italian Accord of 12 September 1919, which concerned Libya's western, not southern boundary. See, para. 6.105, et seq., above.

[219] See, LC-M, para. 5.43 and Map LC-M 45. See, also, para. 8.05, below, and Map LR 28.

6.186 The issues on which Libya will focus here are the following:

- The fundamental difference between the British and French Governments as to the interpretation and effect of the 1919 Convention;
- Chad's contention that Italy had no right to protest the 1919 Convention;
- The absence of any conflict between the Italian Ministries as concocted in the CC-M (the "mock war"), and the true situation concerning the Italian position during the period of protest and negotiation, which involved two quite separate matters: diplomatic protests and negotiating strategy;
- The significance of the official Italian maps, which Chad has ignored, particularly as illustrated in a most formal and official way in the 1930 Italian School Map Atlas incident;
- The consistency of Italy's conduct in protesting the 1919 Convention and in protesting French incursions north of a strict southeast line;
- France's conduct during the period, revealing the awareness of the French Government that there was no conventional boundary east of Toummo.

(b) **The Diametrically Opposed Views of the British and French Governments Over the Meaning and Effect of the 1919 Convention**

6.187 The differences dividing Great Britain and France over the interpretation and application of the 1919 Convention were brought into focus when the two Governments tried to coordinate their responses to Italy's protest in 1921[220]. This has already been examined in considerable detail by Libya[221]. Chad maintains in the CC-M that there was no contradiction between the British and French responses[222]. The CC-M states this view in the following words:

> "En réalité la position des deux Etats est, fondamentalement, identique même si les raisons invoquées ne le sont pas entièrement, mais ces divergences apparentes s'expliquent par leur situation respective, à la fois sur le terrain et en droit[223]."

6.188 No one who had examined the evidence produced by Libya in the LM could have written these sentences with any sincerity: that the British and French positions were "fundamentally identical"! As the LM points out, when Foreign Minister Poincaré received the general lines of the proposed reply of the British Government to Italy in a note from Lord Curzon dated 16 May 1922, he sent the British note on to his Ambassador in Rome, M. Barrère, still there after over 22 years and the most experienced of all the French diplomats as to the meaning of the 1900-1902 Accords and all the supervening events and agreements[224]. M. Barrère reacted strongly. Pointing out that the French, unlike the British, considered as a "véritable frontière les délimitations établies par les accords de 1899 et 1919", M. Barrère warned:

> "Il y a donc une différence fondamentale[225] entre le point de vue français et le point de vue anglais quant à l'interprétation à donner aux accords de 1899 et de 1919. Alors que nous voulons par notre

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[220] As in the CM, the CC-M again refers to Italy's protest in 1921 against the 1919 Convention as having been made "tardivement". See, CC-M, para. 8.57. This is false; it was not until 1921 that Italy learned of the 1919 Convention, entered into behind its back in violation of the obligations of Great Britain and France under Article 13 of the 1915 Treaty of London. Italy then promptly protested.

[221] See, LM, para. 5.192, et seq.; LC-M, para. 4.207, et seq.

[222] See, CC-M, para. 8.59.

[223] CC-M, para. 8.65.

[224] See, LM, para. 5.192, et seq.

[225] At least Chad and M. Barrère are in agreement on the word "fondamentale"!

> réponse fermer la porte à toutes revendications italiennes, les Anglais, s'ils répondent dans le sens indiqué par Lord Curzon, autorisent les Italiens à persévérer dans leur demande. La Consulta aura beau jeu pour nous dire que ce que nous appelons une ligne-frontière n'a jamais été considerée comme telle par le Gouvernement Anglais et que notre interprétation des accords de 1899 et 1919 est en contradiction avec celle de Gouvernement Britannique[226]."

It is quite remarkable that the CC-M could quote from M. Barrère's dispatch and yet omit the essence of his message to M. Poincaré - that the British and French positions were fundamentally different[227].

6.189 This fundamental difference identified by M. Barrère never vanished: the cracks were merely papered over. The covering used was the supposed special situation between France and Italy created by the 1900-1902 Accords (not a word being mentioned about the 1912 Agreement[228]). It will be recalled that the first reaction of the British Foreign Office to the line of argument advanced by the French Government as a basis for replying to the Italian protest was that it was "extraordinary", particularly in its reliance on a map said to have been annexed to the 1899 Declaration, which the British could not find annexed to their original copy[229].

6.190 Chad attempts to reconcile what M. Barrère regarded as the fundamentally different positions of Great Britain and France in several ways:

- That the British and French were in agreement that Italy's protest was unfounded[230];

  Comment: *But for entirely different reasons: for the British, because Italy's rights were not (and could not be) affected by the 1919 Convention between Great Britain and France and, therefore, its protest was unfounded; for the French, Italy's protest was unfounded because Italy had supposedly accepted the alleged 1919 boundary in the 1900-1902 Accords. The CC-M quotes from internal British Foreign Office notes that*

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[226] LM, para. 5.195, and French Archives Annex, p. 353.

[227] See, CC-M, para. 8.71.

[228] See, LM, para. 5.205, where the French note reacting to Lord Curzon's proposed response to Italy is quoted from.

[229] See, LM, paras. 5.205-5.208.

[230] See, CC-M, para. 8.66.

disparage Italy's territorial claims in the region, but this was no more significant than rather uninformed, backstairs gossip[231].

- That France and Great Britain were in very different positions, on the ground, in 1919-1921: as to France:

> "... elle occupait effectivement l'intégralité de la zone d'influence que lui avait reconnue les accords franco-britanniques de 1899 et 1919[232]";

as to Great Britain, its side of the line remained merely a zone of influence, which the British had no difficulty, in respect to part of Cyrenaica, "pour s'effacer au profit de l'Italie"; as a result:

> "Ce qui demeurait pour les Britanniques une simple zone d'influence était devenu pour les Français une possession coloniale 'à part entière'[233]."

Comment: On the factual plane, the intentions of the British and French concerning the territories lying north of approximately 15°N latitude were certainly different; but the French were far from having effectively occupied the whole of the area up to the 1919 line. They had withdrawn from Tibesti in 1916, not to return until 1929-1930; neither by 1919 nor by 1924 had French military forces established installations north of the strict southeast line described in Article 3 of the 1899 Declaration (Map LR 22)[234]. *Both to the north and south of that line the French forces were engaged in a continual series of battles with the indigenous Senoussi peoples between 1914 and the 1930s, as depicted on Map LR* 23[235], *which covers these events through 1927. So French effectivités, a prime requisite of which is peaceful occupation, had not been established by France in any of the borderlands by 1919-1921, not even up to a strict southeast line, let alone up to the 1919*

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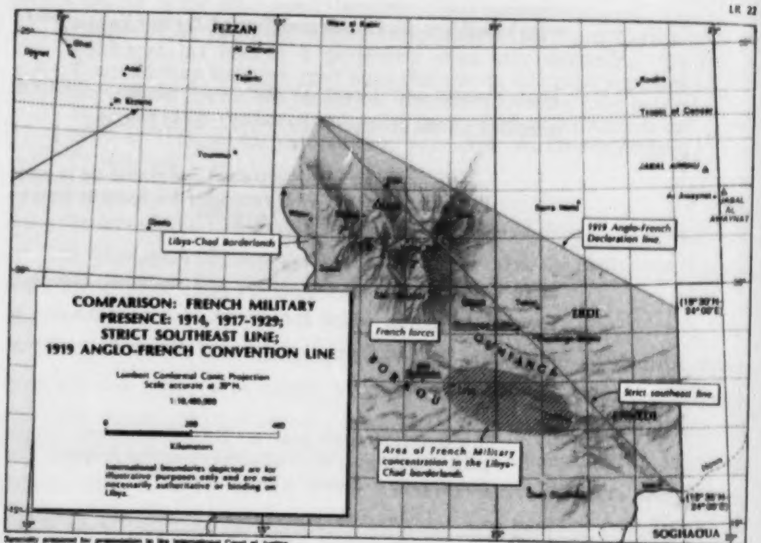
[231] These notes are mentioned and quoted in LC-M, para. 4.190, pointing out that some of the notes were full of mistakes, such as that there had been no Ottoman protests to the 1899 Declaration, when indeed there had been. See, LM, para. 4.190.

[232] CC-M, para. 8.71. This is an important admission by Chad that the 1919 Convention, just like the 1899 Declaration, did not involve the recognition of any more than a zone of influence.

[233] CC-M, para. 8.71. The words quoted are taken from the Barrère note referred to above.

[234] A similar map appeared as Map LC-M 45, referred to in the LC-M at para. 5.43, where it illustrated the situation on the ground in 1914 according to the Histoire Militaire de l'Afrique Equatoriale Française. Map LR 22 describes the situation on the ground between 1917 and 1929, as well, so these dates have been added to the map.

[235] This map appeared as Map LC-M 48, referred to in LC-M, para. 5.60.



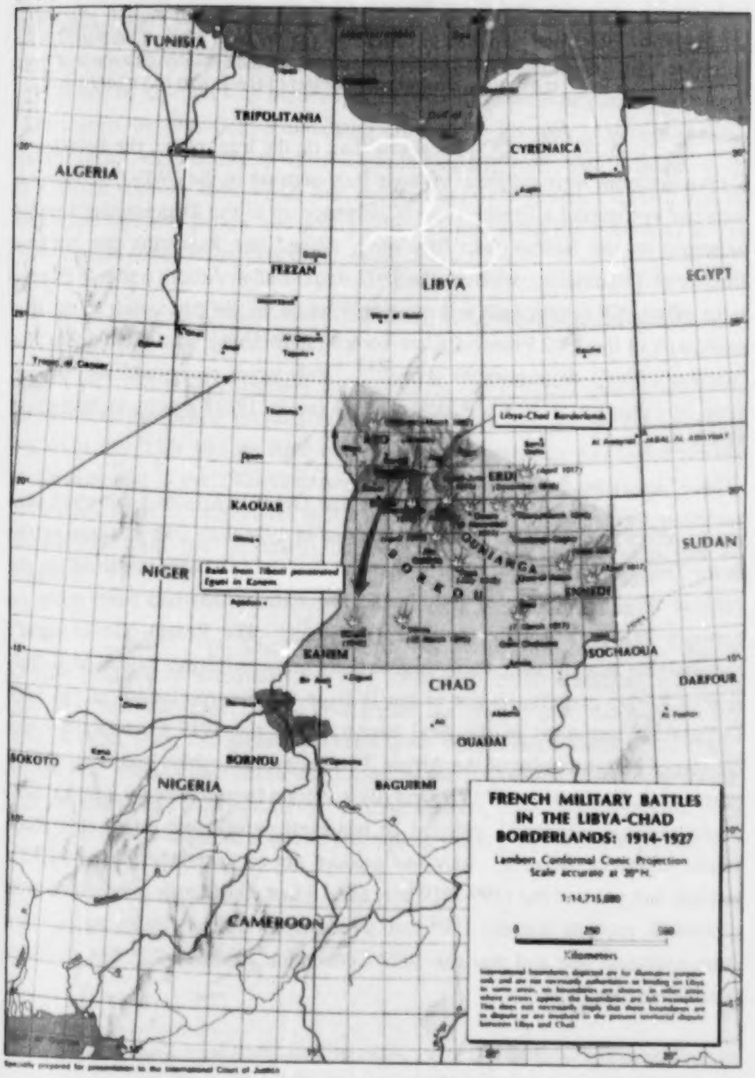
COMPARISON: FRENCH MILITARY PRESENCE: 1914, 1917-1929; STRICT SOUTHEAST LINE; 1919 ANGLO-FRENCH CONVENTION LINE

LR 22
FEZZAN
Tropic of Cancer
1919 Anglo-French Declaration line
Libya-Chad Borderlands
French forces
ERDI
BORKOU
OUNIANGA
ENNEDI
Strict southeast line
Area of French Military concentration in the Libya-Chad borderlands
(19°30'N 24°00'E)
SOGHAOUA
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:10,400,000
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

Specially prepared for presentation to the International Court of Justice

Note: *Map reflects only A.L.F. military activity. A.O.F. occupied Zouar in December 1913 and Bardai in 1914, abandoning both posts in August 1916.*

LR 23


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Tropic of Cancer
Libya-Chad Borderlands
JABAL AL ARKINAT
TIBESTI
ERDI
(April 1917)
KAOUAR
OUNIANGA
B O R K O U
SUDAN
NIGER
Raids from Tibesti penetrated Egueï in Kanem
ENNEDI
(April 1917)
KANEM
SOCHAOUA
CHAD
DARFOUR
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
20°
25°
30°
10°

FRENCH MILITARY BATTLES IN THE LIBYA-CHAD BORDERLANDS: 1914-1927

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000

0 250 500
Kilometers

Specially prepared for presentation to the International Court of Justice

> *line. The situation on the ground has been described in detail in the LM and LC-M, revealing the lack of French effectivités now claimed by Chad*[236]*. On the legal plane, Chad makes no attempt to explain how a territorial boundary can emerge from a treaty where one party denies that this was the treaty's intent.*

6.191 The CC-M suggests that, on the legal plane, the British and French positions were different vis-à-vis Italy because in the 1900-1902 Accords Italy had recognized a French zone of influence up to the Tripolitanian frontier indicated on the famous map (the wavy, dashed line indicating the notional frontier of Tripolitania), whereas the 1902 Anglo-Italian Accord had not had the same effect. Of course, such a conclusion is based on the misreading of the first paragraph of the 1902 Franco-Italian Accord (substituting "sous-mentionées" for "susmentionées") demonstrated above[237]. Italy never recognised any French zone of influence in North Africa in 1902 (or in 1912) except in respect to Morocco.

6.192 As for the comment that Great Britain had exercised care not to affect French rights in its negotiations in 1934 with Italy concerning the Sarra Triangle[238], the real point is that the British took pains not to affect the position of either France or Italy in the negotiations that had been going on between France and Italy for over five years. The French Government's considerable anxiety over these negotiations between Great Britain and Italy related to two matters: (i) not to put in issue the "interpretation" of the 1899 Declaration contained in the final paragraph of the 1919 Convention - this concerned the end point of the Article 3 southeast line, which had been shifted north by 4° of latitude to 19°30'N; and (ii) to refrain from relying on arguments of a geographical, economic, political or historical nature that might strengthen Italian claims in the area. Italy was anxious not to acknowledge the 19°30'N latitude end point of the 1899-1919 line, since it had consistently maintained in its diplomatic protests that the 1899 line, as shown on official Italian maps, was a strict southeast line and that the 1919 Convention modified that line to Italy's possible disadvantage.

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[236] See, LM, para. 4.173, et seq.; LC-M, para. 5.35, et seq. See, also para. 8.05, below, and Map LR 28.

[237] See, paras. 6.50 and 6.66, above.

[238] See, CC-M, para. 8.74. See, also, LM, paras. 5.294-5.298 and 5.302.

6.193 In the event, the British accommodated both France and Italy. In respect to Italy, the 1934 agreement over the Sarra triangle (Map LR 24) fixed no southern terminal point for the Libya-Sudan frontier, only referring vaguely to "its junction with the frontier of French possessions", and omitted any reference to the 1919 Convention (Map LR 24)[239]. France's anxiety over these Anglo-Italian negotiations, to which it was not a party, reflected the insecurity of its position vis-à-vis Italy, which had rejected the 1919 "interpretation", and its awareness that the British had a very different view from the French as to the meaning and effect of the 1919 Convention.

(c) The Contention that Italy Had No Right to Protest the 1919 Convention

6.194 As originally formulated by the French Government in its responses to the Italian protests to the 1919 Convention, the quite astonishing argument that Italy had no right to protest the Convention was based on the assumption that in the 1900-1902 Accords Italy had forfeited any rights, outside the specific limits of Tripolitania shown on the famous Livre jaune map, based on its heritage from the Ottoman Empire[240]. The CM follows this line of argument[241].

6.195 The CC-M, however, has turned the argument around, perhaps realising its weakness. For how could Italy forfeit something it had no right to in the first place? Chad now argues that, in the first paragraph of the 1902 Accord, Italy recognized France's zone of influence outside the wavy, dashed line, which Chad claims was shown as the Tripolitanian boundary on the map a recognition reaffirmed in the 1912 Agreement, which referred to the 1902 Accord. It has been shown above how completely wrong this line of argument is:

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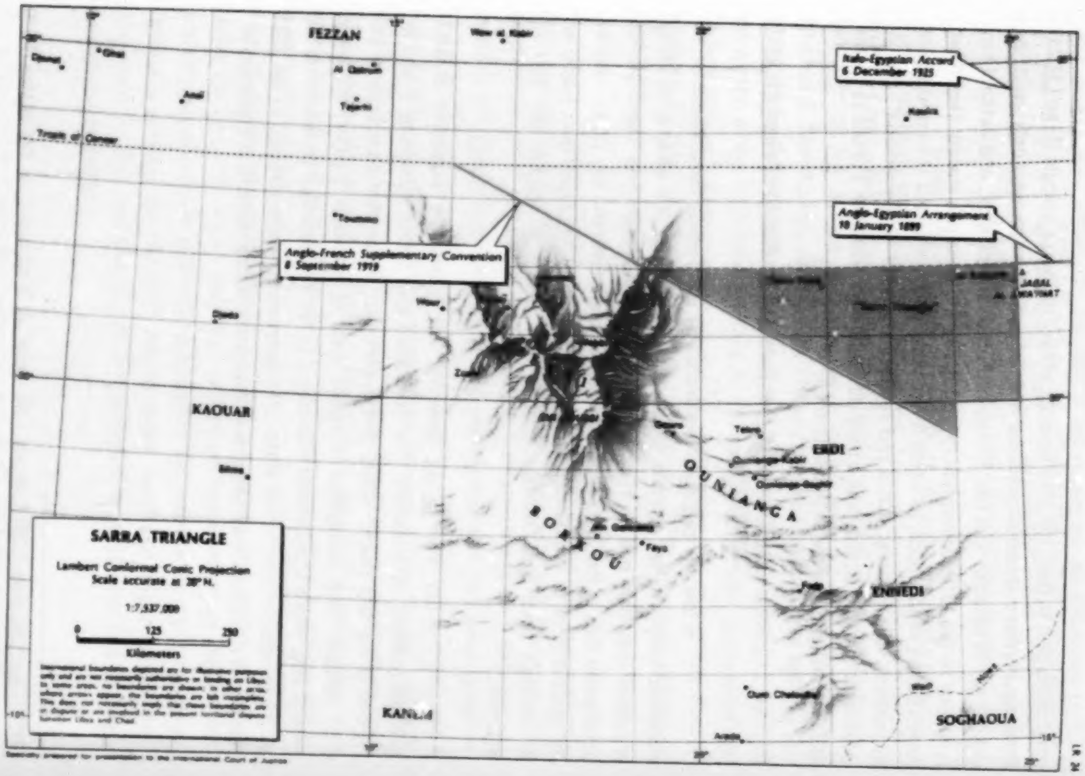
[239] See, LM, paras. 5.295-5.299 and 5.302. Map LR 24 appears in the LM as Map No. 82 referred to in para. 5.286. On the map, the boundary with Sudan is shown stopping at its juncture with the 1919 line at 19° 30'N. This is only because the map was prepared to illustrate the "Sarra triangle"; the 1934 agreement specified no such end point.

[240] See, LM, para. 5.209.

[241] See, e.g., CM, p. 191, para. 186.


SARRA TRIANGLE
Lambert Conformal Conic Projection
Scale accurate at 20° N.
1:7,537,000
0
125
250
Kilometers
Italo-Egyptian Accord
6 December 1925
Anglo-Egyptian Arrangement
10 January 1899
Anglo-French Supplementary Convention
8 September 1919
JABAL AL ʻUWAYNAT
FEZZAN
KAOUAR
BORKOU
OUNIANGA
ERDI
ENNEDI
KANEM
SOGHAOUA
Tropic of Cancer
LR 24

- It is based on a misreading of the first paragraph of the 1902 Accord[242]; for the only French zone of influence recognised there by Italy concerned Morocco;

- It is based on a distortion of the Livre jaune map, which did not define the wavy, dashed line as a conventional boundary encircling Tripolitania; it was only a notional frontier.

These points have been adequately elaborated on elsewhere in this Reply.

(d) The "Mock War" Between the Italian Ministry of Foreign Affairs and Ministry of Colonies

6.196 The CC-M has devoted so much attention to inventing this "mock war" that it calls for some comment in Libya's Reply. Since to do so requires a close look at the relevant documents (what the CC-M calls "un examen minutieux"[243]), Libya has prepared a detailed analysis of this matter, which appears in Volume 2 as Supplementary Annex, No. 5, where the Italian documents (in translation either into English or French) appear alongside the commentary.

6.197 What this analysis shows is the following:

- The initial diplomatic protests of Italy in 1921 and 1922, prepared by the Ministry of Colonies, had followed a line of argument based on the strict southeast line described in Article 3 of the 1899 Declaration and its modification to Italy's potential disadvantage by the 1919 Convention;

- These initial diplomatic notes had not relied on Italy's Ottoman heritage or on the fact that the 1900-1902 Accords were not concerned at all with this southeast line; as a result the Minister of Foreign Affairs took the position in 1924 that it was too late to bring in these other arguments (which the Ministry of Colonies had neglected to rely on earlier);

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[242] See, paras. 6.50 and 6.66, above; by substituting "sousmentionées" for "susmentionées".

[243] CC-M, para. 7.37.

- However, the discussions were taking place at several, quite separate levels: diplomatic protests against the 1919 Convention; diplomatic protests against French troops establishing posts north of a strict southeast line; and the boundary negotiations, which started in 1928, beginning with the French offer to Italy of the Djado salient, followed by the 1929 claim tabled by Mussolini;

- The negotiating strategy adopted by Italy - with the full agreement of the Ministries of Foreign Affairs and Colonies - was to rely on the agreements entered into between France and Italy, which France could not dispute, rather than on the Ottoman claims, which France was certain to contest; this was a practical decision as to how to get the best results in the negotiations;

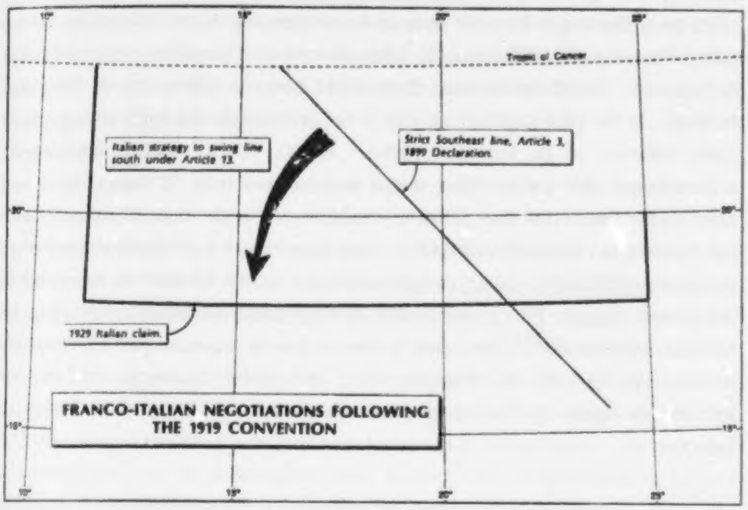
- The agreements in question were the 1900-1902 Accords (the 1912 Agreement was never mentioned) and Article 13 of the 1915 Treaty of London;

- Italy's aim was to start with the 1899 strict southeast line; to claim that, in the 1902 Accord, France was bound in respect to Italy not to exceed that line; then, invoking Article 13, to swing the northeast end of the line southward to 18°N to accord with the 1929 claim tabled by Mussolini (Map LR 25).

6.198 The CC-M is largely correct in its statement at paragraph 7.41 that Italy relied on the 1899 and 1902 agreements and on Article 13 of the 1915 Treaty of London. But this was its negotiating strategy - to rely on agreements which France could not contest rather than to engage in a long discussion about Ottoman rights and titles, which was sure to provoke a strong French reaction.

6.199 Italy neither abandoned nor waived any of these rights; it simply chose not to put them on the negotiating table. And there could be no question of Italy (and even less Libya) being estopped at a later stage from invoking these claims based on succession to the Ottoman Empire. No rule of law requires a party to negotiations to disclose or invoke all its legal arguments. And

LR 25


10°
15°
20°
25°
Tropic of Cancer
Italian strategy to swing line south under Article 13.
Strict Southeast line, Article 3, 1899 Declaration.
20°
20°
1929 Italian claim.
FRANCO-ITALIAN NEGOTIATIONS FOLLOWING THE 1919 CONVENTION
15°
15°
10°
15°
20°
25°

where those negotiations fail, as they did in this case, there is no prejudice to the other party that might form the basis of an estoppel argument. Moreover, at the time of making his 1929 proposal, Mussolini made it perfectly clear to French Ambassador Beaumarchais that Italy could base its claims on its Ottoman heritage. In the 1934 negotiations with Great Britain over the Sarra triangle, Italy again referred to its Ottoman rights. British Foreign Office memoranda acknowledged that Italian rights in the area derived from Ottoman rights and titles, to the extent that they could be established. On the basis of rather limited information, the British Foreign Office may have had rather sceptical views as to the merits of those Ottoman rights inherited by Italy, but this is of no relevance to the present dispute. Finally, official Italian maps make clear Italy's reliance on its Ottoman inheritance[244]. But when it came to how to negotiate with France, Italy decided not to play the Ottoman card, but rather to invoke the various agreements signed by France, in particular Article 13 of the 1915 Treaty of London.

6.200 Italy's decision as to how to express its diplomatic protests and how to negotiate its claim to the hinterland of Tripolitania with France are of interest, but not binding on Libya. If Italy made mistakes in its legal analysis, Libya did not inherit these mistakes any more than Chad has inherited France's mistakes, although Chad has chosen to adopt most of them. Article 3 of the 1955 Treaty established the standard for the recognition of any southern Libyan boundary: "actes internationaux en vigueur" on the critical date - not the welter of diplomatic notes and internal memoranda of the Italian and French Governments, knowledge of which neither negotiating team had in 1955.

6.201 It is apparent from the evidence analysed in detail in Supplementary Annex, No. 5, that there was no "mock war" between the two Italian Ministries. If there was any disagreement initially, it was over the way the Ministry of Colonies had prepared the diplomatic protests in 1921 and 1922, having been overly conservative.

(e) 1930 Italian School Map Atlas Incident

6.202 This incident, discussed and illustrated in the LM[245], has been totally ignored in Chad's pleading to date and in Chad's Map Atlas. The episode is taken up again in Supplementary Annex, No. 5.10, found in Volume 2 hereto, with reference to English translations of the relevant documents, all of which were furnished as Exhibits to the LM. The original colour version of the map that provoked this incident has been located in the Italian archives and appears here (Map LR 16E).

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[244] See, Maps LR 16A-1 and 16A-2, referred to at para. 6.112, above.

[245] See, LM, paras. 5.278-5.279 and Maps Nos. 78 and 79.

6.203 It is interesting to examine this map. The conventional boundary of Libya on the west stops at Toummo; east of there to the Sudan boundary no north/south boundary is shown. This conformed to all other official Italian maps issued prior thereto: no official Italian maps, of which Libya is aware, up until 1935, showed a southern Libyan boundary east of Toummo. The Italian School Atlas Map does not show a boundary in that region, but the area of Libya coloured yellow-green, identified in the map's legend as an Italian possession, extends well south of Tibesti, the southeast corner reaching approximately 15°N latitude, and enveloping most of the Libya-Chad borderlands. In fact, the southern reach of the yellow-green area bears a close resemblance to Libya's claim in this case (Map LR 1 referred to at paragraph 1.29 above). The area bears an even closer resemblance to the modified Ottoman proposal made by the vilayet of Tripoli in 1911 (also shown on Map LR 1). The area covered extended well south of a strict southeast line under Article 3 of the 1899 Declaration and could only have been based on Italy's Ottoman heritage. It was this southern extension of the yellow-green area that the French Embassy in Rome spotted and protested in its Aide-Memoire dated 12 December 1930:

> "Si une ligne très nette de démarcation ne sépare les territoires français et italiens que jusqu'à Toummo, l'identité de couleur entre la Libye et les territoires à l'Est et au Sud-Est de Toummo, qualifiés: Tibesti, tend à faire croire que cette dernière région est comprise dans la zone italienne[246]."

6.204 What then occurred, after the formal French protest was received by the Italian Foreign Ministry, was the following:

- The Foreign Ministry informed the Ministry of Colonies that since the frontiers in the area had not been internationally defined, it would have been preferable to follow the solution adopted on other official Italian maps: to leave in white

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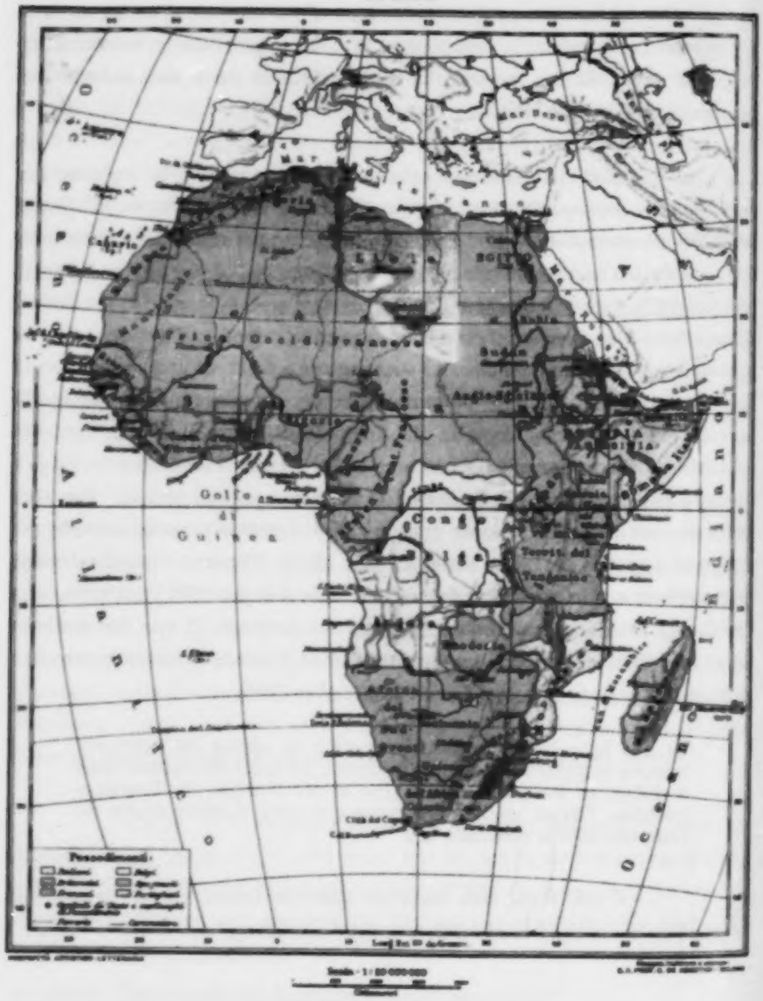
[246] See, Supplementary Annex, No. 5.10.

AFRICA


Mar Mediterraneo
Libia
Egitto
Africa Occid. Francese
Sudan
Anglo-Egiziano
Golfo di Guinea
Congo
Belga
Territ. del Tanganica
Angola
Rhodesia
Oceano Indiano
Possedimenti:

(rather than coloured yellow-green) the area where sovereignty had not yet been defined;

- The Ministry of Colonies replied, indicating it was in full agreement;

- Instructions were then issued to the Ministry of National Education to modify the map atlas accordingly[247];

- Libya has seen no evidence of any French protest to the revised map, which showed no southern Libyan boundary.

6.205 This incident is of particular significance for it occurred in the middle of the Franco-Italian boundary negotiations that culminated in the 1935 boundary settlement. The official Italian view was that there was no conventional southern boundary of Libya east of Toummo. This is what all the Italian maps showed. This is also what the French Government formally advised the French Parliament in the Exposé des motifs accompanying the law authorising ratification of the 1935 Treaty. The incident reveals, as well, that the two Italian Ministries were working in complete harmony: there was no war between them, as Chad attempts to show.

(f) The Consistency of Italian Conduct in Protesting and Rejecting the 1919 Convention and in Protesting French Military Incursions North of a Strict Southeast Line

6.206 Chad concedes that Italy repeatedly protested ("at least five diplomatic notes") over a long period (between 1921 and 1934) the 1919 Convention and the subsequent 1924 demarcation[248]. Chad also concedes that Italy protested French military incursions north of a strict southeast line[249]. These protests were first made when French forces moved in to occupy Tibesti in 1930[250]. In 1933, Italy protested France's move northward to occupy for the first time the key oasis of Tekro on the trade route from Benghazi to Ouadaï. Italy's conduct in this respect will again be examined below in Chapter IX.

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[247] Libya has not been able to locate the coloured map in the Italian School Map Atlas as altered according to those instructions.

[248] See, CC-M, para. 7.40.

[249] See, e.g., CC-M, para. 7.44.

[250] See, LM, para. 5.269, et seq.; LC-M, para. 5.78.

(g) French Conduct During the Period Revealing the French Government's Awareness that there Was No Conventional Libyan Boundary East of Toummo

6.207 It is only necessary to list here the elements of French conduct showing that the French Government knew very well that there was no conventional boundary east of Toummo:

- The very fact that from 1928 to 1935 negotiations were actively underway between Italy and France to delimit Libya's southern boundary;
- French studies in 1928 (the studies of General Serrigny and of M. Saint, Resident General in Tunisia) that envisaged large territorial concessions being made to Italy south of Fezzan and Cyrenaica, to include all of Tibesti and areas even further south[251];
- The terms of the draft treaty accompanying the 1928 proposal offering Italy the Djado salient[252];
- Certain internal dispatches of Ambassador Beaumarchais[253];
- French insecurity demonstrated during the Anglo-Italian negotiations in 1934[254];
- The 1935 *Exposé des motifs* of the French Government[255].

French conduct pre-1945 is again examined in Chapter IX below.

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[251] *See*, *LM*, para. 5.258, *et seq*.

[252] *See*, *LM*, para. 5.260, *et seq*.

[253] *See*, *LM*, para. 5.262, *et seq*.

[254] *See*, para. 6.193, above.

[255] *See*, para. 6.215, below.

SECTION 11. The 1935 Franco-Italian Settlement

(a) Introduction

6.208 The CC-M contains some remarkable pages concerning the 1935 Franco-Italian Agreements - even more remarkable for what they do not say than for what they say! It would appear that Chad prefers to slide past the essence of the arguments concerning the 1935 Treaty of Rome presented by Libya in its Memorial (and developed further in its Counter-Memorial) and instead to linger over certain aspects of distinctly minor importance.

6.209 Chad is wrong if it believes that by dodging the real issues they can be made to disappear. It will be recalled what Libya has pointed out in its earlier pleadings about the central role played by the 1935 Treaty in the present dispute - and in spite of the fact that the most important instrument comprising the 1935 Agreements, the "African" Treaty (referred to generally as the 1935 Treaty), never formally entered into force, as both Parties concede. But the tactics adopted in Chad's pleadings of burying the head in the sand like an ostrich, at least reduces the number of pages required for rebuttal. In fact, it is Libya's view that the boundary agreed between Italy and France should be the starting point of Chad's claim, not the 1919 line.

6.210 In view of the failure to exchange ratifications, the 1935 Treaty never achieved the status of a treaty which, in the words of Article 26 of the Vienna Convention on the Law of Treaties, "is binding upon the parties to it and must be performed by them in good faith". This is a settled point. Another point - on which both Libya and Chad are also fully agreed - is that, in spite of this, the 1935 Treaty, as well as the negotiations leading up to it, and the debates that ensued, are among the essential elements of the conduct of Italy and France on the international plane. For such conduct reveals: (i) the intention of the parties to the 1935 Treaty; (ii) the problems that they sought to settle; and (iii) the status of the boundaries between their colonial possessions that existed in 1935, which they sought to modify or resolve.

6.211 It is on the basis of these premises that Libya has pointed out three things in its earlier pleadings:

- In 1935, Italy and France had explicitly recognised in public, formal declarations that no conventional boundary had previously been fixed between their respective territories east of Toummo. Thus, the line provided for in Article 2 of the 1935 Treaty delimited for the first time this boundary and did not constitute the rectification of a pre-existing boundary. Since the Treaty of Rome never entered into force, it follows that the pre-existing situation of no delimited boundary survived unmodified;

- In 1935, Italy and France explicitly recognised in public, formal declarations that the Treaty did not concern a cession of French territories to Italy, but rather the recognition of the ownership by Italy of the territories situated to the north of the new boundary;

- In 1935, Italy and France explictly recognised in public, formal declarations that the 1935 Treaty, had it entered into force, would have finally discharged France of the obligation, set out in Article 13 of the 1915 Treaty of London, to resolve in Italy's favour the question pending between the two Powers over the southern boundary of Libya. It follows, therefore, that since the Treaty never entered into force, the obligation in question was not discharged by France. Accordingly, it must be taken into account today in order to put an end to the present territorial dispute sub judice.

Each of these three points will now be touched on. It will be shown at the same time that Chad's Counter-Memorial presents no challenge to the validity of these premises.

(b) Recognition of the Absence of Any Conventional Boundary

6.212 In the LM and LC-M it was shown that the text of the 1935 Treaty, its context and the travaux préparatoires demonstrate beyond any doubt that no boundary had been established east of Toummo before 1935 and that France (like Italy) had explicitly and publicly so recognised.

6.213 Dealing first with the text of the 1935 Treaty, it is sufficient to recall here that Article 2 of the 1935 Treaty, relating to Libya, speaks of the "détermination" of the boundary east of Toummo, specifically identified as the "point terminal de la ligne fixée par l'Accord de Paris du 12 septembre 1919" (emphasis added). In other words, the text makes clear that the matter in hand was to determine (or fix) for the very first time the boundary line in a region to which the line fixed (or determined) in the 1919 delimitation, also for the first time, did not extend. The precise legal significance of this choice of terms becomes even more apparent if Article 2 is compared with Article 4 of the same Treaty, which talks of the "substitution" of a boundary for the previously established boundary between other Italian and French colonial territories (Eritrea and the Somali Coast).

6.214 As to the context of the 1935 Treaty, Libya has emphasised the very special importance of the official press communiqué in which France and Italy explained internationally that the Treaty had brought about a "rectification" of the boundary between Eritrea and the Somali Coast, while in the case of Article 2 (which concerned Libya) the question was to "déterminer" the boundary line beyond the "point final" of the course of the boundary fixed in 1919[256].

6.215 Finally, the French parliamentary travaux furnish the clearest sort of confirmation that there was no pre-existing boundary. The French Government, in the Exposé des motifs accompanying the draft law to authorise ratification of the 1935 Treaty, assured the Parliament that the Treaty would put an end to the awkward situation of "absence de frontières" in the region, and even explained that this absence resulted from the fact that "(l)'arrangement du 12 september 1919 laissait l'Italie et la France sans frontière conventionelle à l'est de Tummo"[257].

6.216 How does Chad's Counter-Memorial attempt to deal with these documents of apparent overwhelming probative force? It tries to avoid them. The CC-M just ignores the several acknowledgements of no pre-existing boundary contained in the negotiated texts (the Treaty and the press communiqué), as well as in the unequivocal declaration of the French Government to the Parliament (the Exposé des motifs). All that can be found in the CC-M is the peremptory remark that Libya in its assertions concerning the recognition by France of the absence of a boundary "fausse la réalité juridique et factuelle"[258]. No more than that; except that the CC-M gives the impression that the Libyan analysis was based exclusively on some off-hand suggestions contained in an unsigned "note interne du Quai d'Orsay"[259]. The formal statement of the French Government in the Exposé des motifs is simply ignored! There is enough here to raise the question who is the "faussaire": is it Libya, which cites numerous official documents of both a unilateral and bilateral character, or is it Chad, which does all it can to conceal them?

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[256] See, LM, para. 5.327.

[257] LM, para. 5.336, et seq.

(c) Recognition of Italy's Title to the Territories to the North of the 1935 Line

6.217 The text of the 1935 Treaty itself does not provide the clearest answer to the question whether in the delimitation carried out under Article 2 the parties felt that a cession of territory was involved or simply the recognition of ownership of the territories concerned. However, certain specific factors, appearing both in the context of the Treaty and in the travaux, establish the second hypothesis.

6.218 Here the decisive proof is the joint declaration, issued to the public by the two States, contained in the official press communiqué of 7 January 1935. In it the territories situated north of the line provided for in Article 2 are carefully described as "territoires ainsi reconnus comme appartenant à la Libye". This official declaration of the parties to the Treaty constitutes without any doubt an authentic interpretation of the Treaty, (ejus interpretare, cujus condere). It fits the definition of that fundamental element of the context referred to in Article 31(a)(2) of the Vienna Convention: "any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty".

6.219 As to the travaux préparatoires, it is not necessary to repeat the analysis already set out in the LM, particularly since Chad has made no attempt to deal with it in the CC-M[260]. This analysis shows that the solution adopted in Article 2 represented an important territorial sacrifice for Italy. Italy had accepted to give up its previous and much more extensive claims in order to obtain from France "les mains libres" in Italy's planned aggression against Ethiopia. In other words, for reasons having nothing to do with Libya, Italy was willing to settle for French recognition of Italian ownership of territory south of Tripolitania, Cyrenaica and Fezzan that was minuscule in comparison with the territory to which Italy believed it had a legitimate claim.

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[258] CC-M, para. 9.48.

[259] CC-M, para. 9.47.

[260] See, LM, para. 5.303, et seq.; C-CM, para. 6.03, et seq.

6.220 Thus, under the 1935 Treaty, France did not cede to Italy a portion of French territory; it recognised that the territory in question belonged to Italy. The evidence supporting these arguments is indisputable. No doubt this explains why Chad has failed to find any better way to rebut Libya's arguments than just to ignore them. Chad also ignores how the United Kingdom, very well informed on, and extremely interested in, the ups and downs of Libya's territorial claims, had interpreted the situation, as the LM set forth. The documentary evidence produced by Libya reveals that the United Kingdom also believed that, by the 1935 Treaty, "... France has now definitely recognised as Italian territory the ownership of which had not been previously determined[261]".

6.221 The CC-M attempts a diversionary tactic in the face of this evidence. The CC-M spins out a theory around a certain number of Italian and French documents (most of them internal) in which, in the context of proceeding to implement Article 2 of the 1935 Treaty, references are made to a "cession" of territory by France to Italy. According to Chad, this language implied the recognition by both France and Italy that the Treaty was aimed at transferring to Italy territory that was French, a transfer that could not ultimately be carried out since the Treaty never entered into force[262].

6.222 The first observation to make about this theory is that in no event could the documents cited prevail over such a document as the joint declaration of 7 January 1935, a document prepared and signed by both parties to the Treaty and expressing their mutual intent. But, in addition, the LC-M has fully explained why such documents talk of a "cession". It is because, at the time of signature of the 1935 Treaty, Italy was well aware that French forces had established positions - contrary to law in Italy's view - in certain locations situated in the area claimed by Italy, both north and south of the boundary line that was to be set out in Article 2 of the Treaty. Moreover, Italy had sent to the French Government a number of very firm notes of protest in this regard, pointing out the unlawful nature of the presence of French forces in these regions. Thus, had the Treaty entered into force, its implementation on the French side would have involved the withdrawal of French troops from the scattered locations where they had established posts within the territory recognized as belonging to Italy. The French departure would have meant handing over these locations to the Italian army.

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[261] LM, para. 5.341.

[262] CC-M, para. 9.50, et seq.

6.223 It is thus not surprising that both Parties talked of a "cession" in referring to the arrangements that they envisaged carrying out. It was a handy term that appropriately described what was going to occur concretely on the ground. In other words, the fact that both Parties had talked of a "cession" had no implications for the identification of the legal titles over the territory in question; it related to the practical measures required to implement the Italian take-over. As a result of this so-called "cession", Italy finally could exert its sovereignty over this territory, in accordance with the legal titles which it had inherited from the Ottoman Empire and which France had finally recognised, albeit over only a small part of the territory to which Italy and the Ottoman Empire had laid claim in the past.

(d) The Influence on the Settlement of the Present Dispute of France's Obligations to Italy under Article 13 of the 1915 Treaty of London

6.224 Both Libya and Chad have indicated their agreement that the 1935 Treaty of Rome would have completely released France from the obligations it had assumed in 1915: to grant Italy "equitable compensation" in the form of settling questions concerning the boundaries between their colonial territories in favour of Italy[263]. Since the 1935 Treaty did not enter into force, the obligation in question was never extinguished.

6.225 For Chad, the fact that the 1935 Treaty was unquestionably linked to the 1915 Treaty of London means that the 1935 Treaty concerned a "cession" of territory. Chad's reasoning is as follows: if France owed "compensation" to Italy, and if the Treaty of Rome granted such "compensation", this necessarily meant that, in the 1935 Treaty, France had ceded French territories to Italy.

6.226 Unfortunately, this syllogism, while logical in appearance, is fundamentally defective. "Compensation" cannot be assimilated to "cession de territoires", as the LM and the LC-M. have fully explained[264]. Given the fact that, in its Counter-Memorial, Chad has chosen not to comment on Libya's explanations, let alone criticise them, only a short résumé of the essential elements of this explanation is necessary.

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[263] Article 13 of the 1915 Treaty of London.

6.227 According to the tenor of Article 13, what France had to do to "compensate" Italy was to settle in Italy's favour "the questions relative to the frontiers of the Italian colonies" (which included Libya) and the neighbouring colonies of Great Britain and France. Certainly in doing so a cession of territory - as for example in the boundary substitution provided for in Article 4 of the 1935 Treaty in favour of Eritrea - might well be involved. But a cession of territory might also not be involved, as for example where no delimitation had been agreed upon previously. In such a case, France would have been obliged to take into account Italy's claims in order to arrive at a settlement in Italy's favour. Article 2 of the 1935 Treaty was directed at this type of situation, since it fixed for the first time the southern boundary of Libya in a way that would be in Italy's favour, at least as seen from the French standpoint. Of course, as has been pointed out in the LM and the LC-M, Italy was short-changed in this settlement of Libya's southern boundary: in reality the settlement was more in France's favour, but this was the price Italy was willing to pay in order to achieve its objectives in Ethiopia.

6.228 The 1935 Treaty never entered into force. And it must not be forgotten that Italy, in spite of France's insistence, refused to exchange ratifications precisely because the Treaty was so unfavourable to it from a territorial point of view and because Italy had not obtained from France the counter-part concerning Tunisia and Ethiopia it had taken for granted. Had the territorial settlements of the Treaty been advantageous to Italy it would have promptly exchanged ratifications and received the benefit of these "compensations" irrespective of the absence of a counter-part. At the end of the day, Italy did not receive the "compensations" to which it was entitled and the French debt remained unextinguished. It remains then to be seen to what extent it may be argued that the right of Italy to "compensation" was inherited by Libya at the time of its independence, and the corresponding French obligation was inherited by Chad.

6.229 The question comes down to whether, in the settlement of the territorial dispute now before the Court, Article 13 of the 1915 Agreement should be taken into account. May Libya, as the successor to Italy's territorial rights, claim as against Chad, as successor to France, the equitable compensation due to Italy from France as part of the rights and titles of its inheritance?

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[264] See, LM, para. 5.152, et seq.; LC-M, para. 6.17.

6.230 The LC-M has carefully explained why, in Libya's view, the Court should answer in the positive this question. For Article 13 of the Treaty of London was for France and for Italy the source of the sort of "obligations and rights established by a treaty and relating to the regime of a boundary" that are not affected by State succession, under the relevant principles of international law as codified in Article 11 of the Vienna Convention on Succession of States in respect of Treaties[265].

6.231 Chad has not yet had the opportunity to address this argument, which was not fully developed until the LC-M.

(e) Conclusion

6.232 What emerges from the arguments concerning the 1935 Treaty and related Accords set out in the LM and LC-M, and summarized above, and what Libya wishes to emphasise once more, is that the Treaty and Accords have an essential role to play in the settlement of the present dispute - in spite of the fact that the Treaty did not come into force for failure to exchange ratifications.

6.233 It is also apparent to Libya, after the exhaustive study necessary to prepare for these proceedings, that Libya was perfectly justified in invoking the 1935 Treaty in the past, both during the debates at the U.N. and the O.A.U. and in the several meetings with Chad at which the boundary question came up, in defending Libya's presence in part of the borderlands.

6.234 Chad is thus wrong to reproach Libya for what it terms the "extraordinaire contraste" between the role played by the 1935 Treaty in the position presently developed by Libya before the Court, and that taken before the O.A.U.[266]. Libya remains firmly convinced that its presence in the northern part of the borderlands is legally indisputable. In its statements to the U.N. and the O.A.U., Libya was defending this position, not advancing a territorial claim. Just as Italy in the 1941 Armistice Commission discussions with France considered that the demilitarized zone being designated should be based on the 1935 line rather than the 1899-1919 line proposed by France, regardless of the fact that this boundary never took effect[267], so Libya today considers that the starting point of Chad's claim should be the 1935 line. The 1935 Treaty was not "mort né", as Chad maintains. For over three years it was expected to be placed in effect. Italian and French maps were changed to show the 1935 line. It was only in December 1938 that it became clear that ratifications would not be exchanged. Furthermore, the Treaty had been overwhelmingly approved by the French and Italian Parliaments.

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[265] See, LC-M, para. 6.36, et seq.

[266] See, CC-M, para. 1.49.

SECTION 12. Post-1935 Agreements and Events

6.235 When it became apparent in December 1938 that the boundary settlement reached between Italy and France would fall apart, the outbreak of World War II was less than a year away. As Libya's Counter-Memorial points out, between then and the critical date - 24 December 1951, the date of Libya's independence - nothing that took place on the ground did or could have affected the claims to title in the borderlands as they stood in 1935, just prior to the signing of the 1935 Treaty, and in 1938 when Italy announced that ratifications would not be exchanged[268]. It was also demonstrated in the LC-M that Chad's contentions that Italy had several times recognized France's sovereignty over the "bande d'Aouzou"[269] - a term not invented until the 1970s -, built around such minor incidents as that occurring at the Jef-Jef Plateau in 1938, have no substance[270].

6.236 The official Italian view that there was no conventional boundary east of Toummo was clearly set out on the maps issued by the Italian Ministries. The LC-M included official Italian maps of 1926 and 1939 showing no such boundary - the area east of Toummo to the Sudan border is left blank[271]. In this Reply, a third Italian map, issued in 1941 by the Ministero Dell' Africa Italiana, has been included (Map LR 16C, referred to at paragraph 6.118 above).

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[267] See, LM, para. 5.360, et seq.; LC-M, para. 5.112, et seq; and para. 6.238, et seq., below.

[268] See, LC-M, para. 5.103, et seq.

[269] This invalid contention is repeated in the CC-M at para. 9.73.

[270] See, LC-M, para. 8.28, et seq.

[271] See, Maps LC-M 52 and 54, referred to at LC-M, para. 8.33.

East of Toummo to the Sudan border is left blank - no boundary appears in the region of the borderlands. This was Italy's official position, as the 1930 Italian School Map Atlas incident brought out. No evidence of any French protest against these maps has been uncovered by Libya or submitted as evidence in this case. So much for Italy's alleged acquiescence in France's sovereignty over the area.

6.237 Chad has focussed on one incident during this post-1935 period and invented another fanciful scenario not unlike the "mock war" just discussed. This concerns the 1941 French-Italian Armistice Commission, which is discussed in both of Libya's prior pleadings[272].

(a) 1941 French-Italian Armistice Commission

6.238 The CC-M challenges Libya's conclusion that in the course of the work of the Commission, Italy's representative General Grossi "left open the legal status of the 1935 line and clearly indicated that the delimitation of this boundary had yet to be accomplished[273]". Chad maintains that -

> "Un examen fouillé de toute la documentation pertinente permet, au contraire, de démontrer qu'en substance l'affirmation libyenne est dénuée de fondement, car après avoir rejeté la thèse française, l'Italie finit par renoncer à la contester[274]."

6.239 It will be recalled that one task of the Commission was to create a demilitarized zone. The French argued that the starting point should be the 1919 line. The Italians (General Grossi) rejected this view, observing that Italy was not a signatory to the 1919 Convention, and suggested that the 1935 line, which both Italy and France had once agreed upon, made more sense, even if it was not technically a conventional boundary. It would seem that General Grossi's position was a very sensible one. However, the French were recalcitrant, and at the end of the day, the Italians said it did not matter much and, in any event, it was beyond the mandate of the Commission to deal with international boundary questions. So they put the issue aside.

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[272] See, CC-M, para. 9.75, et seq.; see, also, LM, paras. 5.360-5.361; LC-M, para. 5.112.

[273] LM, para. 5.361.

[274] CC-M, para. 9.76.

6.240 Chad arrives at a very different interpretation of the documents, which it examines at length in the CC-M. Chad takes the letter of General Grossi (President of the Italian Armistice Commission) to his French counterpart dated 12 March 1941[275] and interprets it in this manner:

> "Il découle clairement de la teneur de cette lettre que les Italiens voulaient imposer aux Français, par un acte de force, le tracé prévu en 1935, tout en reconnaissant que ce tracé ne liait pas juridiquement la France[276]."

The Court has only to read this letter to see what a remarkable interpretation this is. General Grossi's letter is correct and businesslike; there is not a hint of a threat of force[277]. Moreover, in quoting from the letter, the CC-M omits the key words from its opening paragraph:

> "Le tracé de la frontière méridionale de la Lybie n'a effectivement pas encore été déterminé de commune entente avec l'Italie et la France."

Thus, General Grossi, in a mild, circumspect letter, informed his French counterpart that the Commission considered the 1935 Treaty to be the appropriate starting point for drawing up the demilitarised zone, for both France and Italy had agreed on this line, in contrast to the 1919 line, to which Italy had never agreed. General Grossi added:

> "Ceci évidemment sans préjudice de la délimitation définitive de la frontière, question qui dépasse le compétence de cette Commission."

It would be difficult to argue with the logic of this position - and impossible to characterize it as a threat of force.

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[275] See, LM, French Archives Annex, p. 164; CC-M, Annex 85.

[276] CC-M, para. 9.79.

[277] It is a well-known fact that top military officers of opposing States serving on armistice commissions of this kind are normally punctiliously correct and courteous to each other. The documents produced by Chad here confirm that this was so in 1941.

6.241 The CC-M then takes its almost ludicrous scenario one step further:

> "Il va sans dire que l'attitude arrogante des autorités italiennes non seulement déconcerta les Français, mais provoqua également une vive réaction[278]."

The documents produced by Chad reveal that between the 12 March letter of General Grossi and France's official reply on 14 May, there was utter confusion within the Vichy Government as to just what France's position was, all of which seems quite understandable given the circumstances of the war, with the French Ministries in Vichy not fully familiar with the file or with France's position during its pre-1935 negotiations with Italy. This all got straightened out in France's 14 May response.

6.242 In this letter, France adhered to its position fashioned in 1913-1914[279] that the 1919 line should be the basis for the demilitarized zone because, in the absence of a bilateral treaty, the 1899-1919 Anglo-French arrangements were the only acts bearing on the question that had an international status. The letter went on to say that the line resulting from these acts was formally recognised as a valid boundary by Italy in the 1900-1902 Accords[280]. No doubt the Italians were stunned when they read the French argument that the line radically modified as to its direction and nature in 1919 could have been accepted by Italy in 1900-1902! But they were too courteous to say so.

6.243 Continuing its scenario, the CC-M then suggests that in the light of "l'âpreté et l'arrogance de la note italienne du 12 mars 1941" one would have expected "un rejet radical" by the Italian side; but instead the Italians caved in ("les Italiens préférèrent capituler"). What the Italian response of 14 July 1941 said was simply this:

- The question of Libya's southern boundary was beyond the competence of the Commission;

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[278] CC-M, para. 9.80.

[279] See, para. 6.123, et seq., above.

[280] See, CC-M, para. 9.87 and Annex 93.

- This question would find its place among the problems to be resolved between Italy and France in the peace treaty;

- The resolution of the question no longer had any practical importance and could be left unresolved[281].

6.244 From this, the CC-M concludes the following:

> "L'Italie, face aux arguments juridiques précis avancés par la France, renonça à insister sur le tracé de 1935;
>
> L'Italie ne contesta pas la valeur et le bien-fondé de la thèse française d'après laquelle seule comptait la frontière 1899-1919[282]."

6.245 The CC-M's analysis of this episode and of the related documents is truly laughable. A polite, reasonable letter from General Grossi is described as arrogant and as a threat to use force to shove down the throat of France the 1935 line. The period of French fumbling to formulate a reply is glossed over. Although it is not really relevant, it reveals the intense French insecurity as to its position concerning a southern boundary of Libya. Italy's reasonableness in the face of French intransigence is called a capitulation in the light of the probative force of France's legal arguments.

6.246 Italy's final letter of 14 July made the obvious point: the Commission was not the place to argue about boundaries. Since the matter had ceased to have any practical significance, the Italians chose to avoid getting into an acrimonious exchange with the French. The CC-M describes this as a position "à la Ponce Pilate[283]"!

6.247 Libya believes that the Armistice Commission episode illustrates, once again, Italy's official position that no conventional Libyan southern boundary existed at the time. Presumably, the Vichy Government of France had chosen to overlook the 1935 French Exposé des motifs, in which exactly the same conclusion was expressed.

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[281] CC-M, para. 9.88 and Annex 95.

[282] CC-M, para. 9.89.

[283] CC-M, para. 9.89.

(b) 1947 Italian Peace Treaty

6.248 There are three subjects of particular relevance concerning the 1947 Treaty that have come up in the pleadings so far. First, in the light of the failure to exchange ratifications of the 1935 Treaty, the 1947 Treaty's effect, if any, on the remaining obligations of France to Italy under Article 13 of the 1915 Treaty of London, which were only partially discharged in the 1919 Franco-Italian Convention. Second, the French proposals to modify Libya's boundaries under the provisions of Article 23 and Annex XI of the Italian Peace Treaty. Third, the failure of France to notify under Article 44 of the 1947 Treaty certain treaties as remaining in force, and the effect of this failure.

(i) The 1947 Treaty and Article 13 of the 1915 Treaty of London

6.249 The CC-M has modified Chad's earlier position and now not only concedes that France had remaining obligations to Italy after the débacle of the 1935 Treaty (as it had in the CM) but also admits that these obligations concerned Libya's southern boundary[284]. Chad maintains, however, without explaining why, that the 1947 Italian Peace Treaty extinguished the remaining obligations of France to Italy under Article 13[285].

6.250 That such a conclusion is wrong has already been fully explained by Libya[286]. The fact that Italy in 1947 lost its rights in respect to Libyan territory did not alter the rules of State succession under which Libya, as Italy's successor in title, inherited Italy's rights, which included the unfulfilled French obligations under Article 13.

(ii) French Proposals to Modify Libya's Alleged Boundaries under Article 23 and Annex XI of the 1947 Treaty

6.251 It has been mentioned in Libya's Memorial that in 1948 France made a proposal for an extensive revision in what France professed to regard as Libya's western and southern boundaries[287]. This is illustrated on Map LR 26. In fact, the French military had already drawn up a rectification proposal

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[284] See, para. 6.169, et seq., above.

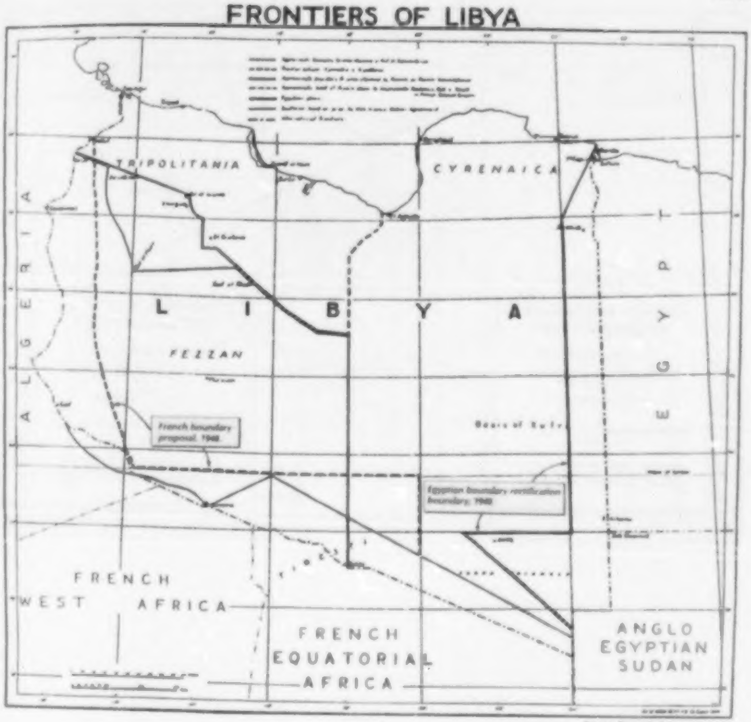
[285] See, CM, p. 202, para. 232; the same contention is hinted at in CC-M, para. 8.51.

[286] See, para. 6.174, above, and LC-M, para. 6.36, et seq.

[287] See, LM, para. 5.365, et seq.

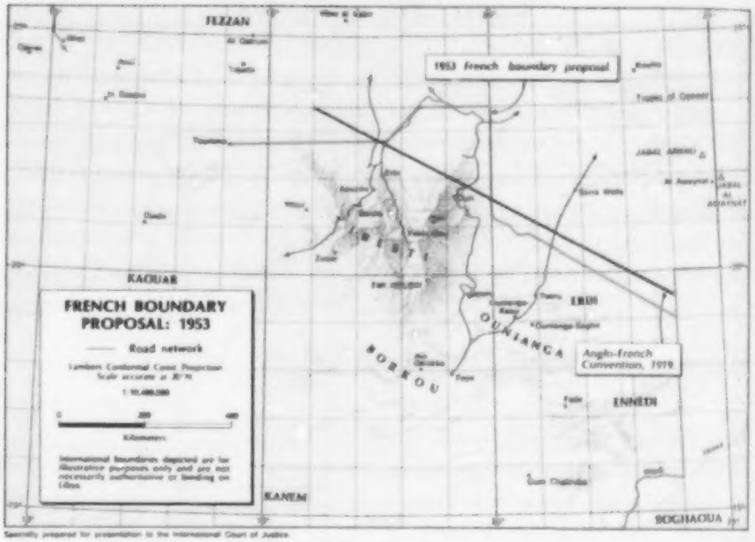
LR 26

FRONTIERS OF LIBYA


TRIPOLITANIA
CYRENAICA
ALGERIA
LIBYA
FEZZAN
EGYPT
Sarir of Kufra
French boundary proposal, 1946
Egyptian boundary rectification boundary, 1945
FRENCH WEST AFRICA
FRENCH EQUATORIAL AFRICA
ANGLO EGYPTIAN SUDAN

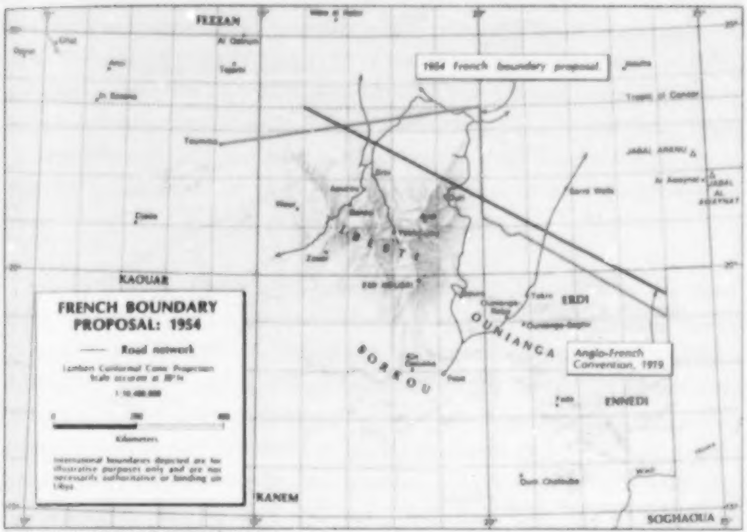
Source: Research Department of the British Foreign Office, 1945

LR 27A


FEZZAN
Al Qatrun
1953 French boundary proposal
Tropic of Cancer
JABAL ARKANU
JABAL AL AWAYNAT
Sarra Wells
TIBESTI
KAOUAR
ERDI
OUNIANGA
BORKOU
Faya
Fada
ENNEDI
Anglo-French Convention, 1919
KANEM
SOGHAOUA
FRENCH BOUNDARY PROPOSAL: 1953
Road network
Lambert Conformal Conic Projection
Scale accurate at 30°N
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

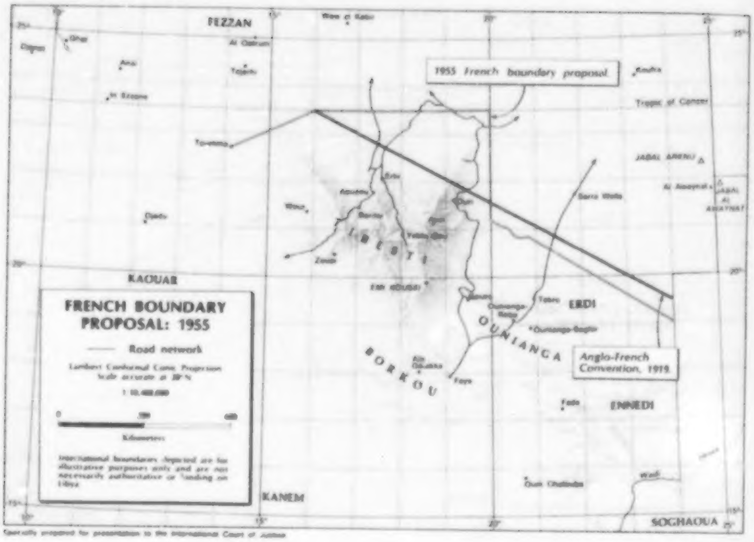
Specially prepared for presentation to the International Court of Justice

LR 27B


FEZZAN
Al Qatrun
Tajarhi
Toummo
1954 French boundary proposal
Tropic of Cancer
JABAL ARKENU
JABAL AL UWAYNAT
TIBESTI
KAOUAR
ERDI
OUNIANGA
BORKOU
Anglo-French Convention, 1919
ENNEDI
KANEM
SOGHAOUA
FRENCH BOUNDARY PROPOSAL: 1954
Road network
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.

Specially prepared for presentation to the International Court of Justice

LR 27C


FEZZAN
Al Qatrun
Tajarhi
Ghat
Djanet
In Ezzane
Tummo
Djado
1955 French boundary proposal
Tropic of Cancer
Kufra
JABAL ARKENU
Al Awaynat
JABAL AL AWAYNAT
Sarra Wells
T I B E S T I
Zouar
Bardai
Aozou
Wour
Yebbi Bou
Emi KOUSSI
KAOUAR
ERDI
O U N I A N G A
Ounianga Kebir
Ounianga Serir
Anglo-French Convention, 1919
B O R K O U
Faya
Fada
ENNEDI
KANEM
SOGHAOUA
FRENCH BOUNDARY PROPOSAL: 1955
Road network
Lambert Conformal Conic Projection
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya
10°
15°
20°
25°

Specially prepared for presentation to the International Court of Justice

of the 1919 line in 1946[288]. France had hoped to accomplish its objective of extensively modifying Libya's boundary with French Algeria and of acquiring the entire Tibesti massif under Annex XI of the 1947 Treaty rather than in direct negotiations later with an independent Libya. These proposals were reflected in the subsequent proposals of the French military in 1953, 1954 and 1955 (Maps LR 27A, 27B and 27C), proposals not based on any French claim of title, but on what was hoped would be leverage in France's favour in the negotiations with Libya.

6.252 France's objectives in 1948 were frustrated by the other three of the four Powers concerned with setting the fate of Italy's former colonies, particularly the Soviet Union. As a result, France proceeded to play its cards in a circumspect manner, unlike Egypt which set out the full extent of boundary changes it wanted, although deferring the issue until Libya became independent. Evidence produced by Chad with its Memorial reveals that in 1950 the French Government considered the pre-war boundary treaties relating to Libya as only "provisoirement en vigueur" and not "déjà fixés par des arrangements internationaux" within the meaning of G.A. Resolution 289(C)[289].

6.253 These events lead to the following conclusions:

- At the time of the Italian Peace Treaty in 1947, France did not regard Libya's boundaries as either fixed or sacrosanct; the French Government was anxious to change radically in its favour the western and southern boundaries that had resulted, according to France, from the two 1919 agreements;

- This remained the intention of the French Government right up until December 1956, when it was able to extract a major concession from Libya along the Algerian frontier as the additional price of France proceeding to carry out the 1955 Treaty and evacuate Fezzan;

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[288] See, also, LM, paras. 5.365-5.366 and Maps Nos. 85 and 86.

[289] See, LC-M, para. 3.94, et seq., and references there to the documents introduced by Chad.

- France had hoped to gain its objectives by a deal agreed among the Four Powers rather than in a subsequent negotiation with a newly independent Libya; France's policy had been, and would continue to be, to attempt to achieve its objectives by indirect means rather than in face-to-face negotiations.

(iii) France's Failure to Notify Certain Agreements under Article 44 of the 1947 Treaty

6.254 This subject has been extensively dealt with above and in the LC-M[290]. Article 44 of the 1947 Treaty was a provision under which the signatories to the Treaty were to indicate which of the various treaties with Italy they considered to remain in force or they wanted to put back into force.

6.255 Chad has produced evidence that several of the "actes internationaux" on which its case relies - notably the 1900-1902 Franco-Italian Accords, the 1912 Franco-Italian Agreement and the 1919 Franco-Italian Convention were not notified under Article 44, which provided that -

> "Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés[291]."

Chad has yet to explain how these "actes internationaux", whether or not included on the Annex I list, which were not in force as a result of not having been notified under Article 44, could meet the criteria of Article 3 of the 1955: "actes internationaux en vigueur" on the critical date, the day of Libya's independence.

(c) 1949 Four Power Commission Report

6.256 This Report has special relevance to the present territorial dispute because of the map attached to it, which emphasised the uncertain status of Libya's southern boundary. It will be recalled that it was in a note appended to the map explaining the French position as to Libya's alleged southern boundary that the French Government committed its famous "bévue"[292].

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[290] See, LC-M, para. 3.11, et seq.

[291] CM, Annex 210. It cannot be maintained that the French Government failed to notify these "actes internationaux" because it was considered that they concerned boundaries and hence survived World War II and did not need to be notified to continue in effect. On the list of treaties notified by France were the extremely important 1860 boundary treaties under which Nice and Savoy became French territory. See, LC-M, para. 3.11.

6.257 Like a number of other episodes that occurred during the history of this dispute, this particular one has been exaggerated far beyond its significance, first by France, and now by Chad. It is reminiscent of other episodes or incidents similarly inflated and distorted in Chad's pleadings: the "Aouzou incident" (1955); the Jef-Jef incident (1938); the "mock war" between the Italian Ministries (1921-1934); the absurd Italian Armistice Commission scenario.

6.258 The reason the French "bévue" committed in this note inserted on the map was a relatively minor matter - although it created problems for the U.N. Secretariat in preparing its Report concerning the boundaries of the former Italian colonies, which led to the adoption of Resolution 392(V) - is that the French position was clearly shown on the map: the 1919 line. It was only the treaty basis for this line claimed by France that was botched in the French note.

6.259 The French-Chadian tactic is obvious: the "bévue" led to an erroneous analysis in the Secretariat's report and, in turn, to U.N. maps showing a Libyan southern boundary that did not conform to the French view; however, the mess was all sorted out in the 1955 Treaty, and in any event, the French representative corrected the mistake in December 1950.

6.260 The difficulty with this line of argument is, first, that the confusion was over only the minor matter of citing the proper supporting treaties, not over the direction of the line argued for by France, the 1919 line. Second, the "bévue" was corrected by the French representative just prior to adoption of Resolution 392(V), so the U.N. was acting after the matter had been straightened out. Nevertheless, the Resolution on its face recognized that there was a problem concerning the delimitation of Libya's southern boundary to be resolved, so the problem had nothing to do with the "bévue". Significantly, France voted for the Resolution[293].

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[292] See, para. 4.17, above.

[293] See, para. 4.17, above.

(d) Article 4 of the 1951 Constitution of the United Kingdom of Libya

6.261 Libya's first Constitution was the work of various groups and councils. It was a task to which U.N. Commissioner Pelt devoted a great deal of attention, drawing on the views of the Four Powers, including of course France. The French Government, therefore, participated fully in the process of preparing and approving Libya's Constitution and must be presumed to have had detailed knowledge of its provisions[294].

6.262 The terms of Libya's 1951 Constitution pertaining to its boundaries are, thus, of great importance to this case. Article 4 of the Constitution provided, as follows:

> "The boundaries of the United Kingdom of Libya are: On the north, the Mediterranean Sea; On the east, the boundaries of the Kingdom of Egypt and of the Anglo-Egyptian Sudan; On the south, the Anglo-Egyptian Sudan, French Equatorial Africa, French West Africa and the Algerian Desert; On the west, the boundaries of Tunisia and Algeria[295]."

What is striking about the text of this Article is that the word "boundaries" is omitted as to the north and as to the south but is included as to Libya's boundaries to the east and west. On the north, the Mediterranean formed a natural boundary. But the omission of "boundaries" as to Libya's southern flank reflects the same conclusion as Resolution 392(V), adopted a year earlier: the undetermined status of Libya's southern boundary.

6.263 Just as France had voted for Resolution 392(V) in December 1950, so it had participated in and lent its support to the preparation and approval of the Libyan Constitution of 1951, which contained this provision concerning Libya's southern boundaries on the critical date. This was at a time when the Quai d'Orsay was describing the pre-war boundary treaties as only "provisoirement" in force. Article 4 of Libya's Constitution said in words what the Italian maps showed graphically: that no conventionally delimited southern boundary of Libya existed.

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[294] See, Supplementary Annex, No. 6.2, which discusses the extent of French participation.

[295] LM, Exhibit 3.

6.264 Unlike Libya, Chad's independence was not introduced with a Constitution that dealt with its boundaries; and Libya is aware of no protest by either France or Chad with regard to Article 4 of Libya's 1951 Constitution. Up until now, Chad has simply ignored this subject entirely, like so many other issues.

PART III

TITLE TO THE BORDERLANDS INDEPENDENTLY OF TREATIES

CHAPTER VII. TITLE TO THE TERRITORY PRIOR TO THE ARRIVAL OF THE FRENCH

SECTION 1. The Borderlands Were Not Terra Nullius at the End of the 19th Century

7.01 Chad's thesis - that France acquired title to the borderlands by occupation - can only be tenable if the territories were res nullius. Libya disputes that this was so. In Libya's submission, this view of the legal nature of the territories was one commonly adopted by European Powers in the era of colonisation, for it facilitated the acquisition of a colonial title in situations where local rulers or tribes were unwilling to accept voluntarily - by treaties of cession or protection - the claim of sovereignty by a European Power. And whereas such a claim may have been valid in relation to uninhabited territories, when applied to inhabited territories, the claim rested upon the assumption that, because in terms of social, political and economic organisation the territories did not conform to a European "model", the territories were by definition terra nullius.

7.02 It was the rejection of this assumption by the Court in the Western Sahara Case that constituted one of the Court's most significant attempts to move international law away from this Eurocentric bias, and to give to territorial title a meaning more consonant with the experience of peoples world-wide.

7.03 It may be recalled that the Court's test was not a very demanding one. The Court found that the territory was not terra nullius on the basis that the "Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organised in tribes and under chiefs competent to represent them[1]". By this test it is clear that the borderlands were not terra nullius, even if that test does not answer the further question as to which State, if any, was entitled to claim sovereignty on the international plane - a separate matter dealt with in Section 4 below.

7.04 Simply applying the Court's test, it seems undeniable that it was met in this case. For this reason, Chad has sought to minimise the relevance of the Court's Opinion to the present case. As the following Section will demonstrate, Chad's view of the Opinion is not sustainable, as a matter of law. Nor, on the facts, is Chad's view sustainable. As Libya's Memorial demonstrated[2], the Toubou, Bideyat, Zaghawa, Awlad Sulaiman tribes, and the Tuareg confederation of tribes, were identifiable tribes or tribal confederations with a traditional social structure under acknowledged leaders: the "derdé", chief, or "sultan"[3]. That they had a strong sense of title, or ownership, to their traditional lands is evidenced by the frequency of disputes over their territorial rights that the Senoussi sought to resolve.

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[1] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 81.

7.05 Chad assumes that the tribes would need to have "une structure unifiée[4]". But this is to add a quite extraneous condition. Many areas of the world are not terra nullius, but equally peopled by ethnic or tribal groups that lack a unified structure. Examples exist in almost all continents, including Europe - as the present difficulties in the Balkans bear witness. Yet lack of unity amongst peoples does not signify that the territory they live in is res nullius.

SECTION 2. The Relevance of the Western Sahara Case

7.06 Chad seeks to minimise the effect of the Court's statement of the law in its Advisory Opinion of 1975. Essentially, Chad advances two propositions: first, that the Court there dealt with a specific and special case, so that the Court's statements were not intended as statements of general principle; second, that any general principle to be extracted from State practice and doctrine existing at that time, i.e., the end of the 19th and beginning of the 20th Centuries, shows that the territory in dispute in the present case could properly be regarded as terra nullius, and therefore open to occupation by France. These two propositions need to be examined separately.

(a) Did the Court Intend to State a Principle of General Application?

7.07 Chad argues that "les observations" of the International Court of Justice were not general in character, and were made "dans le contexte des questions spécifiques (et différentes) auxquelles elle devait répondre".

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[2] See, LM, paras. 3.34-3.43.

[3] As acknowledged in CC-M, para. 5.176.

[4] CC-M, para. 5.179.

Consequently, "... il serait erroné de déduire de l'affaire du Sahara Occidental une doctrine générale du statut juridique des populations indigènes"[5].

7.08 For Chad, this context is provided by the two questions on which G.A. Resolution 3292 (XXIX) dated 13 December 1974 requested the Court to give an advisory opinion, quoted at the end of paragraph 3.08 of the CC-M. Then, it is said in paragraph 3.09 that "dans ce contexte, la Cour a indiqué ...", followed by a quotation of a part of paragraph 80 of the 1975 Advisory Opinion.

7.09 However, the answer of the Court to Question I ("was Western Sahara ... at the time of colonisation by Spain a territory belonging to no one (terra nullius)?") was given in paragraphs 79-83 of its Advisory Opinion. It seems necessary, therefore, to place the Chadian partial quotation of paragraph 80 in the context of the other paragraphs of the Advisory Opinion dealing with Question I; and, in so doing, to indicate the elements of this context that the CC-M has deliberately omitted in order to reduce or nullify the Court's statement on the law in force at the time.

7.10 It should be observed, first, that the CC-M does not refer to paragraph 79 of the Advisory Opinion, where the expression terra nullius was considered by the Court in connection with occupation as "... one of the accepted legal methods of acquiring sovereignty over territory". By so doing, Chad deliberately omits the following consequence in law, clearly general in character, which the Court laid down:

> "'Occupation' being legally an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession, it was a cardinal condition of a valid 'occupation' that the territory should be terra nullius - a territory belonging to no-one at the time of the act alleged to constitute the 'occupation'[6]."

7.11 Then, having stated this general rule, the Court went on to the particular issue contained in Question I of the Advisory Opinion. But once more Chad fails to mention that the Court, taking into account the above "cardinal condition of a valid occupation", stated that:

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[5] See, CC-M, paras. 3.11, 5.13 and 5.186.

[6] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 79, p. 39.

> "In the view of the Court, therefore, a determination that Western Sahara was a 'terra nullius' at the time of colonization by Spain would be possible only if it were established that at that time the territory belonged to no-one in the sense that it was open to acquisition through the legal process of 'occupation'[7]."

7.12 Secondly, if one turns to the quotation of paragraph 80 of the Advisory Opinion made in the CC-M, it can be observed that two main points have been omitted.

7.13 On the one hand, the CC-M leaves out the legal rationale for the Court's statement. In fact, the Court begins paragraph 80 by saying - "Whatever differences of opinion there may have been amongst jurists, the State practice of the relevant period indicates that ... ." Therefore, in relation to the sources enumerated in Article 38 of the Statute of the Court, it is clear that the Court's statement on the law in force at the time of colonisation was not grounded on doctrine (a "subsidiary means for the determination of rules of law") but on "... the State practice of the relevant period", that is, on "international custom as evidence of a general practice accepted as law". Chad seeks to evade this conclusion by dropping the reference to doctrine and speaking only, in an imprecise way, of "la pratique".

7.14 In addition, the CC-M has omitted a large part of paragraph 80, namely, that part where "occupation" in its relationship to agreements with local chiefs is considered by the Court so as to reinforce the previous statement on the law in force at the time[8]. In the part omitted by Chad the Court stated that:

> "On occasion, it is true, the word 'occupation' was used in a non-technical sense denoting simply acquisition of sovereignty; but that does not signify that the acquisition of sovereignty through such agreements with authorities of the country was regarded as 'occupation' of a 'terra nullius' in the proper sense of these terms. On the contrary, such agreements with local rulers, whether or not considered as an actual 'cession' of the territory, were regarded as

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[7] Ibid.

[8] See, Supplementary Annex, Nos 6.3(2) and 7.10. This is a 1931 French study in which it is revealed that in 1862 France signed a convention with the Ajjer Tuareg dealing with a broad range of subjects including taxation. It is not apparent that this tribe differed significantly in terms of the criteria set out in the Eastern Greenland case from the Awlad Sulaiman, the Toubou and the other borderlands tribes. Certainly, territory inhabited by a tribe with which a major Power had contracted in this way could not be said to be terra nullius.

> derivative roots of title, and not original titles obtained by occupation of terrae nullius[9]."

7.15 It is absolutely clear, when the whole of paragraph 80 is read in context, that the Court was stating a general principle, discernible in the practice of States in Africa generally, to the effect that under the law then in force there could be no valid occupation of African territories if those territories were inhabited by tribes or other socially and politically organised peoples, because such territories were not terra nullius.

7.16 The suggestion that the Court was merely giving an historical account of the particular case of the Western Sahara is unacceptable[10]. It is clear that the Court dealt with the questions put to it as legal questions:

> "The questions submitted by the General Assembly have been framed in terms of law and raise problems of international law ... These questions are by their very nature susceptible of a reply based on law; indeed, they are scarcely susceptible of a reply otherwise than on the basis of law"[11].

7.17 It is equally clear that the law stated by the Court was the law as it then existed, that is to say, in the words of the Court "at the period beginning in 1884"[12]. Thus, it can safely be assumed that the same principles are applicable in this case, for Chad asserts that the French "occupation" occurred between 1899-1914.

(b) Is the Court's Opinion Consistent with Chad's Argument that State Practice and Doctrine in the Relevant Period (1899-1914) show that the Borderlands Were Properly Regarded by France as Terra Nullius?

7.18 Obviously there is a preliminary question of fact, namely did the peoples in the borderlands exhibit sufficient evidence of "social and political organisation" so as to bring them within the ambit of the Court's statement of principle? As to this, Libya has no doubt that the answer must be affirmative.

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[9] I.C.J. Reports 1975, para. 80, p. 39.

[10] See, CC-M, para. 3.09. Chad places itself in a more radical position than Spain in the Western Sahara Case, given that Spain, although not denying the "legal" character of the questions posed by the General Assembly Resolution, had considered that "in the particular circumstances of the case" they were, however, "of a pure historical or academic character". On the answer of the Court rejecting the Spanish objection, see, Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 16, p. 19, et seq.

[11] I.C.J. Reports 1975, para. 15, p. 18.

[12] I.C.J. Reports 1975, para. 78, p. 38.

7.19 If this is so, and if one rejects Chad's arguments that the Court was not laying down any general principle, or not a principle of law, or not of the law relevant at the period critical in this case, then Chad's argument that the law was different from that maintained by the Court must be rejected. It is an argument which, on its face, runs directly contrary to what the Court has said. Not surprisingly, the argument is advanced by Chad by a process of reasoning which is not that used by the Court and which, quite independently of the Court's Opinion, would be very difficult to sustain.

7.20 Essentially, Chad's argument is that the doctrine - the juristic writings - of the time lend ample support to the French position that the borderlands could be regarded as terra nullius.

7.21 Chad relies on a part of the doctrine - called by Jörg Fisch the "Theorie der herrenlosen Souveränitat" or "theory of sovereignty without master" - closely linked with the interests of the European Colonising Powers, which presupposes that sovereignty only could attach to "Civilized States[13]". Chad deliberately ignores other authors of the time, clearly in favour of the rights of indigenous peoples[14], and concludes that the Libyan thesis on title to the territory:

> "... présente de très lointains rapports non seulement avec l'opinion sur la personnalité juridique internationale des tribus et populations indigènes, prédominante parmi les juristes positivistes de l'époque, mais encore avec celle, pourtant très nuancée, de D. ANZILOTTI (deuxième version)[15]."

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[13] See, CC-M, paras. 5.141-5.142. Fisch, J., Die Europäische Expansion und das Völkerrecht, Stuttgart, Steiner, 1984.

[14] On the doctrine of the period, see, Exposé Ecrit de la Mauritanie, in I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, pp. 28-48, in particular, pp. 33-37, and more extensively Fisch, J.: op. cit., Kapitel 4, "Die Stellung der überseeischen Gebiete in der Völkerrechtslehre" (The position of colonial territories in the doctrine of International Law), pp. 153 et seq.

[15] CC-M, para. 5.143, adding in the following paragraph that: "Toutefois, même à supposer que cette affirmation libyenne soit correcte, et que les Senoussistes aient dès lors possédé un titre jurique sur le B.E.T., il n'en demeurerait pas moins vrai que ce titre serait remis en cause par l'occupation militaire française." CC-M, pp. 219-220. To sustain this argument, Chad treats the title of the local tribes as purely proprietary in character,

7.22 The argument is defective, not only because it is based upon a highly selective choice of doctrine, but even more because it simply ignores the Court's conclusions in the 1975 Opinion that this positivist, minority view in the doctrine did not represent the law. Many writers have noted that one of the most important contributions made by the Western Sahara Opinion was the rejection of that positivist, minority view. As Shaw puts it:

> "The Court unambiguously asserted that 'the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as terrae nullius'. This posthumous rehabilitation of the classic authors of international law, and sidestepping of those late nineteenth-century theorists denying any form of international personality inherent in non-State entities, places considerable stress upon the numerous agreements concluded between the European colonizing powers and the local communities. It elevated them from the status of mere methods by which European powers demonstrated their occupation of a particular territory as against each other to documents of a central character in the acquisition of sovereignty over territory[16]."

7.23 The Court's opinion, not surprisingly, has influenced legal doctrine in this area, and it has not been unusual for commentators to modify their previously held views in the light of the Court's position. To give just one example, Ian Brownlie adapted his views to the Court's pronouncements. In the second edition of his "Principles of Public International Law" (1973), p. 141, he stated that territory not possessed by a political community satisfying the criteria of statehood "are subject to occupation"; six years later, after the Western Sahara Opinion was rendered, the same passage refers in the third edition (1979), p. 142, to territory not possessed by a community having a social and political organisation.

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deriving from tribal customary law and having no significance for public international law: CC-M, para. 5.18.

[16] Shaw, M., "The Western Sahara Case", British Year Book of International Law, Vol. XLIX, 1978, pp. 120-154, at p. 133. See, also Fisch, J.: op. cit., p. 467. Although observing that the Advisory Opinion did not judge the nature and legal effects of such agreements, Fisch states that "In gleiche Weise ergibt sich indirekt, dass die Stämme Völkerrechtssubjekte sind". ("Equally it results indirectly that tribes are subjects of international law.") For other comments on the Western Sahara Case, see, Chappez, J., in R.G.D.I.P., t. 80, 1976, pp. 1132-1187; Flory, M., in A.F.D.I., t. 21, 1975, pp. 253-277; Franck, Th. M., in A.J.I.L., Vol. 70, 1976, pp. 694-721; McWhinney, E., in Zaörv, Vol. 37, 1977, pp. 1-42; Prevost, J.F., in Clunet, J., t. 103, 1976, pp. 831-862; Riedel, E.H., in German Y.B.I.L., Vol. 19, 1976, pp. 405-442 and Okere, N.O., in I.C.L.Q., Vol. 28, 1979, pp. 296-317.

7.24 In French legal doctrine, the Court's analysis of the law was also widely praised. Thus, Nguyen Quoc Dinh, D., Daillier, P., and Pellet, A., in Droit International Public, 2^{e} éd. (1980), p. 432, highlight the Western Sahara Opinion in these words:

> "La doctrine traditionnelle distingue les territoires étatiques des territoires sans maître - ces derniers étant définis comme non incorporés dans un Etat; n'importe quel territoire se trouve alors inclus dans l'une ou l'autre catégorie.
>
> Cette conception européo-centriste a été clairement rejetée par la C.I.J. dans son avis consultatif du 16 octobre 1975; appelée à répondre à la question suivante: "Le Sahara Occidental était-il au moment de la colonisation par l'Espagne un territoire sans maître (res nullius)?", la Cour a admis que ce territoire, habité par des populations nomades socialement et politiquement organisées, ne constituait pas, au moment de l'occupation coloniale, une terra nullius.
>
> Il convient donc de distinguer les territoires sans maître, inhabités - car on imagine mal des sociétés humaines totalement inorganisées - des territoires non étatiques mais habités."

7.25 However, Chad's refusal to acknowledge the Court's rejection of this minority doctrine is not the most conspicuous weakness of Chad's argument. It lies in Chad's refusal to acknowledge that what the Court had principally relied on - to support its conclusions on the law - was not doctrine, but State practice.

7.26 In paragraph 8.1 of its Advisory Opinion, the Court considered the Spanish practice in respect of the Western Sahara territory. It stressed the fact that the Royal Order of 1884 proclaimed the establishment of a protectorate "... on the basis of agreements which had been entered into with the chief of the local tribes". It noted that Spain, in negotiating with France over the limits of the territory in the north,"... did not rely upon any claim to the acquisition of sovereignty over a terra nullius"[17].

7.27 The first fact, considered as the "controlling factor" in the case, prompted Judge Dillard to state that "... you do not protect a terra nullius"[18]. The Court relied on the "State practice of the relevant period" - that is, on the general practice of European States dealing with indigenous peoples with regard to acquisition of African territory - without examining its constitutive elements.

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[17] I.C.J. Reports 1975, para. 81, p. 39.

[18] I.C.J. Reports 1975, p. 124.

7.28 In fact, these elements of practice were demonstrated in the information furnished to the Court, particularly by Mauritania[19], and they are contained in well-known works of that period[20]. In respect of Great Britain, the works of M.F. Lindley and E. Hertslet[21]. The works of Rouard De Card and P. Fauchille illustrate French practice[22]; and that of E. Nys the practice of Belgium in respect of the Congo area[23]. To these may be added the studies of G. Jeze and Ch. Salomon[24] and, amongst more recent studies, the works published by Ch. Alexandrowicz[25] presumably were also relevant for the Court in the Western Sahara case.

7.29 From the State practice in the relevant period, that of France merits particular attention, given that the CC-M in paragraph 3.12 states that: "La France a, en fait, conclu certains accords avec des chefs dans la partie méridionale de ce qui est aujourd'hui le Tchad (même si ces accords n'ont pas été respectés)." Adding that: "Toutefois, ailleurs, elle a établi son autorité par voie d'occupation, parfois par usage de la force[26]."

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[19] I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, pp. 48-50.

[20] See, Fisch, J.: op. cit., pp. 332-337 on this matter and, in particular, his remarks on colonial agreements in the treaty collection of Martens, at p. 337.

[21] Lindley, M.F.: The Acquisition and Government of Backward Territory in International law, Treaties on the Law and Practice in Relation to the Law of Colonial Expansion, London, Longmans, Green and Co., 1926; Hertslet, E.: Map of Africa by Treaty, Vol. I.

[22] Rouard De Card, E.: Les Traités de Protectorat conclus par la France en Afrique, 1870-1895, Paris, Durand et Pedone-Lauriel, 1897; Fauchille, P.: Traité de Droit International Public, Paris, Rousseau, 1925, t. I, 2ème Partie, p. 692, et seq.

[23] Nys, E.: Le Droit International. Les principes, les théories, les faits, t. II, Bruxelles, Edit. Weisenbruch, pp. 85-90.

[24] Jeze, G.: Etude théorique et pratique sur l'occupation comme mode d'acquérir les territoires en Droit international, Paris, Girard de Brière, 1896; Salomon, Ch.: De l'occupation des territoires sans maître, Paris, 1889.

[25] Alexandrowicz, Ch.: "The Role of Treaties in the European-African Confrontation in the Nineteenth Century", in African International Legal History, Mensah-Brown, 1975, p. 64, et seq.; The European African Confrontation, A Study in Treaty Making, Leyden, 1973.

[26] CC-M, para. 3.12.

7.30 In fact, independently of agreements with indigenous peoples collected in the French works indicated above, it may be noted that, for the period from November 1883 to December 1884, the President of the French Republic signed a series of decrees approving treaties concluded with indigenous chiefs. It results from those acts that France concluded 11 agreements concerning Senegal and Haut-Niger, two with regard to the Côte des Graines, seven concerning the Ivory Coast and about 30 concerning the Gulf of Guinea and the Congo areas[27]. It seems difficult to deny that such agreements were considered by France as a basis for title in Africa, for they had no other very obvious purpose[28].

7.31 It is worth noting that this belief was also shared by Great Britain and Germany in respect to the Lake Chad area. This fact is evidenced by Article 5 of the Convention of 1st July 1890 concluded by them, in which each Party undertook to notify the other Party of any treaties or agreements it might conclude with tribes inhabiting the area surrounding Lake Chad[29].

7.32 This practice eloquently testifies to the fact that, in this period, European Powers did not rely on occupation as a root of title, but rather on cession. Thus they did not regard Africa as generally terra nullius, and they were in principle prepared to accept a derivative title, based on treaties of cession or protection, which presupposes that they accepted the validity of the prior title of the relevant African tribe.

7.33 One element largely ignored by Chad in its presentation of the law is the body of arbitral practice. This is perhaps because that arbitral practice is largely contrary to Chad's thesis. True, Judge Huber in the Island of Palmas Case viewed these treaties as in the nature of mere contracts and not in themselves a basis of title[30]. But this view was not shared by other arbitrators.

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[27] I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, p. 49 referring to the Revue de Géographie, t. XVI, janvier-juin 1885, p. 223.

[28] See, also, fn. 8, above, concerning a 1862 convention between France and the Ajjer Tuareg.

[29] I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III., p. 50, referring to Bonfils, H.: Manuel de Droit International Public (Droit des Gens), 7ème ed., Paris, Ed. Rousseau, 1914, No. 541, p. 379.

[30] U.N.R.I.A.A., Vol. II., p. 858.

7.34 In the Case of the sovereignty of Zanzibar and its dependencies in Africa in respect to Muscat after the death of Sayid-Said, decided on 2nd April 1861 by the Governor of India[31], an African ruler, the Sultan of Zanzibar, accepted international arbitration with an Arab State. The previous Report of General W.M. Coghan and the final decision of the Governor of India did not express any doubt on the international personality of Zanzibar or its title to territory; the former Report referred to "... l'indépendante souveraineté de Zanzibar et de ses territoires d'Afrique"[32].

7.35 In the later case of the Lamu Island (Germany/Great Britain), decided in 1889, the sovereignty of the Zanzibar Sultanate over its territory and its international capacity to enter an agreement with European Powers is once more recognised, both Parties relying on evidence of their rights in acts of the local ruler[33].

7.36 African tribes have also submitted themselves to international arbitration with States. In the Case of the Territory of Bechuanaland and Griqualand[34], the Parties were effectively the Republic of South Africa (Transvaal) on one hand and, on the other hand, the Chiefs of the Barolong, the Batlapins, of the Bechuana, and the Chief of the Griquas. Being an international arbitration, the international personality of those African tribes cannot be denied. This case is of special interest on the status of territory under African rulers.

7.37 In accordance with the special agreements of 1 March 1871, the subject matter of the dispute was the limits between the territories of the tribes and that of the Republic of Transvaal, the latter claiming against the Chief of Griquas "... la ligne suivante, que ce dernier considère comme la frontière septentrionale de son territoire, savoir ..."; and the Chief "... conteste le droit de la

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[31] See, De Lapradelle, A., and Politis, N.: Recueil des Arbitrages Internationaux, t. II, 1856-1872, 2nd. ed., Paris, Les Editions Internationales, 1957, pp. 54-77. For other sources, see, Stuyt, A.M.: Survey of International Arbitrations 1794-1970, Leiden, Sithoff, 1972, Nr. 62, p. 65.

[32] De Lapradelle, A., and Politis, N., op. cit., t. II, p. 69.

[33] See, the sources in Stuyt, A.M.: op. cit., Nr. 156, p. 161, and the comments on the case by Fisch, J.: op. cit., pp. 419-422.

[34] De Lapradelle, A., and Politis, N : Recueil des Arbitrages Internationaux, 2nd. ed. Paris, Les Editions Internationales, 1956, t. II, pp. 676-705 with a Note of J. Westlake.

République Sud-Africaine sur le territoire situé au S. de cette ligne, qu'il réclame, au contraire, pour lui et le peuple dont il est le chef". Transvaal also claimed against the Chiefs of the Bechuana tribes "... certaines lignes dont la description est donnée dans le document ci-annexé" and the Chiefs "... contestent les droits de la République Sud-Africaine sur les territoires situés à l'O. et au S. des lignes décrites dans l'appendice ci-joint"[35]. The arbitral decision of 17 October 1871 not only established the boundary between the territories of the tribes and Transvaal but also the limits between the territories of tribes.

7.38 It is implicit in that decision that the territory in question could not be terra nullius. Nor can it be persuasively argued that the issues raised were simply issues of proprietary rights, without prejudice to whether the territory was res nullius or not, because questions of proprietary rights could have been settled by the municipal courts of the Transvaal, without any need for arbitration.

7.39 Moreover, these decisions cannot be distinguished on the basis that some of the tribes were parties to the arbitration, because similar principles have been applied even in cases where the two parties were European States.

7.40 In the Case of the Bulama Island (Portugal/Great Britain)[36], the judgment of 21 April 1870, comparing the titles to the territories claimed by each party, stated that "... le titre britannique dérive d'une prétendue cession consentie par les chefs indigènes en 1792", although in the result the Arbitrator preferred the Portuguese title because "... la souveraineté du Portugal avait été établie sur le continent et sur l'île de Bulama"[37]. However, the validity of such agreements entered into with local rulers as a basis of title was not denied.

7.41 A similar case is the Delagoa Bay Case (Great Britain/Portugal)[38], where the British contended that the territory was "... libre et indépendant, les naturels du pays, sous l'autorité de leurs chefs, y gardant un pouvoir absolu en étant en possession des territoires". Britain argued that the territory appertained to the African rulers of the Tembe and the Mapouto, and "... ces chefs, avec le consentement des indigènes, et en vertu de leurs droits indépendants, ont cédé par un traité, en 1823, la souveraineté sur ces territoires à la Couronne de la Grande-Bretagne"[39]. These contentions, it may be observed, are far from the idea of terra nullius and they rely on the legal validity and effects of agreements with local chiefs. Portugal did not oppose them on the merits, but argued that such agreements were without effect on quite different grounds[40].

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[35] De Lapradelle, A., and Politis, N., op. cit., pp. 685-688.

[36] Ibid., t. II, pp. 605-617.

[37] Ibid., p. 613.

[38] Ibid., t. III, pp. 597-650.

7.42 In the judgment of 24 July 1875, the Arbitrator upheld Portugal's claims to the territory on the basis of a long and effective presence partly acquiesced in by other European Powers, adding in respect of the British title that "... si l'affaiblissement accidentel de l'autorité portugaise dans ce parage a pu, en 1823, induire en erreur le capitaine Owen et lui faire considérer de bonne foi comme réellement indépendants de la Couronne de Portugal les chefs indigènes des territoires aujourd'hui contestés, les actes par lui conclus avec ces chefs n'en étaient pas moins contraires aux droits de Portugal". The Arbitrator added that, after Owen's visit in 1823, "... les chefs indigènes de Tembe et de Mapouto ont de nouveau reconnu leur dépendence vis-à-vis des autorités portugaises"[41].

7.43 Finally, in the Barotseland Boundary case (Great Britain/Portugal)[42], the parties asked the Arbitrator to determine "... the limits of the territory of the Barotse Kingdom", this expression meaning "... the territory over which the King of Barotse was paramount ruler on the 11th June 1891". The reference to this date is of great interest: it is that of the Treaty between Great Britain and Portugal establishing spheres of influence in Central Africa, in which the limits reached "the territory of the Barotse Kingdom"[43].

7.44 Consequently, to decide on the dispute between Great Britain and Portugal, the judgment of 30 May 1905 was obliged to determine the extent of the territory over which "... le Roi du Barotse regnait comme Chef

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[39] Ibid., p. 604.

[40] Ibid., p. 614.

[41] Ibid., p. 638.

[42] U.N.R.I.A.A., Vol. XI, pp. 65-69.

[43] Ibid., p. 65.

Suprême (Paramount Ruler)", and so to establish which tribes were under his actual authority. To this end, the Arbitrator referred to local law in force, by virtue of which:

> "... le Chef Suprême est celui qui exerce l'autorité gouvernementale selon leurs coutumes, c'est-à-dire, en nommant des Chefs subalternes, ou en leur accordant l'investiture, en décidant des litiges entre ces Chefs, en les déposant selon les circonstances, et en les obligeant à les reconnaître comme leur Seigneur Suprême[44]."

7.45 Once more, the doctrine of terra nullius is rejected if title to territory of an African ruler is clearly recognised and if this title is taken as a basis for the delimitation of spheres of influence between two European Powers.

SECTION 3. The Links Between Tribes such as the Toubou and the Awlad Sulaiman and the Senoussi

7.46 Chad's thesis of the lack of "une structure unifiée" depends upon minimising the role and influence of the Senoussi. Thus, Chad concludes that the Senoussi never provided the essential political and social organisation[45], that they were an entirely religious organisation[46], with no powers of administration or taxation over the tribes, but only over caravans[47]. Chad concedes that, in order to resist the French advance, the Senoussi assumed a military role, organising the tribes, but for Chad this role fell far short of territorial sovereignty based on effective, stable and permanent control over the tribes[48].

7.47 As can be seen from Libya's Memorial[49], this picture of Senoussi control deliberately minimise its effectiveness. It omits the role of the Senoussi in providing education, protection of the caravan trade, settlement of tribal disputes, and active encouragement of commerce. It ignores the special tax exemptions granted by the Ottoman Governor of Tripolitania, pursuant to

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[44] Ibid., p. 68.

[45] See, CC-M, para. 5.156.

[46] See, CC-M, para. 5.157.

[47] See, CC-M, paras. 5.158-5.159.

[48] See, CC-M, paras. 5.163-5.164.

[49] See, LM, para. 3.44, et seq.

Firmans from the Sublime Porte, to each zawiya and the sheikh at its head[50], as a recognition of the quasi-autonomy of the Senoussi movement. Moreover, it shows a total failure to grasp the link between the religious authority of the Senoussi and temporal power. Libya has included in Volume 2 of this Reply a note that explains in some detail this Ottoman-Senoussi relationship and the roles of each under Islamic concepts of sovereignty[51]. In addition, Ottoman documents from the Turkish archives have been annexed that specifically demonstrate this relationship[52]. For many years, communications passed between the Porte and the Head of the Senoussi. Gifts and ceremonial robes were sent to the sheiks of the zawiyas. The Senoussi were consulted on matters of defence of the region from the invading European Powers.

7.48 Traditional Islamic doctrine saw no division between religious authority and temporal power, the latter being conceded by the followers of Islam to the Caliph or his representatives[53]. As noted in a British Foreign Office memorandum, "In Islam rule and religion go together[54]". Without overall temporal authority, the Senoussi could not have organised the tribes into a collective, military defence of the territory.

7.49 It is clear from the historical record that France began to make contact with the leader of the Senoussi in June 1911, via the French Consul-General in Cairo, with a view to coming to an agreement over boundaries[55]. Such a move was unthinkable if the Senoussi presence in the borderlands was as trivial as Chad now pretends. The reply of the Head of the Senoussi Order took the French to imply that Arada was the frontier claimed by France, and reiterated that the Senoussi boundaries ("c'est à dire celles du Gouvernement ottoman") are at Oum Chalouba ("sont à Oum Chalouba[56]").

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[50] See, Al-Dajani, A.: The Senussi Movement: its Origin and Development in the Nineteenth Century, 1967, pp. 205-206, LR Exhibit 12.

[51] See, Supplementary Annex, No. 3.

[52] See, Supplementary Annex, No. 8.

[53] See, El-Kosheri, "History of the Law of Nations, Regional Developments: Islam", 7 Encyclopedia of International Law, pp. 222-230. The separation of state and religion was essentially a modern development, beginning in the 20th Century, with no influence in the borderlands at this time. See, also, Supplementary Annex, No. 3, pp. 1-8.

[54] Cited in LM, para. 3.47.

[55] See, Supplementary Annex, No. 10.7

7.50 In the event, higher French authority regretted this initiative taken by the French Consul-General and it was not pursued. It was seen as detrimental to the French claim to the limit laid down in the 1899 Declaration[57]. But the incident reflects the French perception at the time that real control of the territory lay with the Senoussi.

7.51 The paradox in Chad's argument lies in its unwitting destruction of any French claim to have replaced Senoussi control. For if one accepts Chad's argument that Senoussi control was inadequate to sustain legal title to the territory, it follows inevitably that one must reject the French claim. Whatever one thinks of the effectiveness of the Senoussi control, the fact is that it was not a purely military administration. There was at least some semblance of the normal attributes of territorial administration - the provision of education, the furtherance of commerce, the settlement of disputes etc. - whereas with the French there was none. It is clear beyond question that the only French activity was military, confined to very few posts, and in relation to Tibesti, relying exclusively on very occasional patrols around the perimeter of the area[58]. So the very tests which Chad applies in an effort to defeat any claim of title by the Senoussi are in fact fatal to Chad's own thesis. For by those tests France could never have acquired title.

7.52 The further weakness in Chad's argument is that it depends upon isolating each element in the Libyan claim - as if each element, independently, had to establish a sovereign claim of title to the territory. Thus, in Chad's view, the indigenous peoples, considered as a separate element, lacked sufficient unity to claim title. Similarly, the Senoussi, as a separate element, were too ineffective to support a claim of title. And lastly, the "effectivités" of the Ottoman Empire were, as a third separate element, inadequate. As will be shown in Section 5 below, this view reflects a total failure to understand the system by which, under overall Ottoman sovereignty, these territories were administered. Thus, if one looks at the administration of the territory as a system combining all three elements - the local tribes, the Senoussi, and the Ottomans - rather than looking at each element in isolation, it can readily be seen that there was an effective administration of the territory, far superior to that which the French subsequently brought to the territory after conquest.

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[56] LR Exhibit 10.23.

[57] See, Supplementary Annex, Nos. 10.7, 10.11 and 10.12.

[58] See, para. 8.04, et seq., below.

7.53 However, mention must first be made of a different strand in Chad's argument, namely that the indigenous peoples were quite separate from the Libyan people.

SECTION 4. The Identity of the Indigenous Inhabitants of the Borderlands with Libya

7.54 Chad questions the identity between the tribes of the borderlands and the people of Libya itself[59]. It is not entirely clear what purpose this observation serves within the context of Chad's legal argument as a whole: it cannot be to question Libya's locus standi, so it is presumably directed more to questioning Libya's right of succession to the claims of title derived from these tribes.

7.55 In any event, it is an observation with no foundation in fact. The Awlad Sulaiman are without question a Libyan tribe in the sense of a tribe whose origins lie in territory that is indisputably Libyan, having moved southwards from Fezzan in the mid-19th Century in the face of Ottoman penetration of the "hinterland". So far as the Toubou are concerned, the Teda Toubou, although centred in the Tibesti, are nomadic and range from areas as far north as Al Qatrun in Fezzan and the Koufra oases in Cyrenaica[60]: their links are therefore decidedly "Libyan", and Chad has conceded their close tie to the Senoussi[61]. During the recent civil war in Chad, many Toubou fled north to Fezzan and Cyrenaica. The Daza Toubou are certainly centred more in the south, as well as in Ennedi and Ounianga, but their trading links have been traditionally northwards. The numerous Libyan merchants, originating in Fezzan and Cyrenaica, are unquestionably Libyan. And the Senoussi of course are so, with the result that the predominant affinity of the borderland peoples is now, and always has been, with Libya[62].

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[59] See, CC-M, para. 5.174.

[60] See, LM, para. 3.40, and the authorities there cited.

[61] See, CC-M, para. 5.71, where a 1911 despatch of a French Officer is cited in which it was said of the Toubou that they "reçoivent leur mot d'ordre des Senoussis et leur obéissent aveuglément."

Section 5. The Basis of the Early Claims by the Ottoman Empire

7.56 Chad's basic thesis is that the Ottomans never acquired any rights or title in the borderlands[63]. From this it would follow, according to Chad, that neither Italy nor Libya had anything to inherit from the Ottoman Empire.

7.57 The Ottoman hinterland claim was expressed in some detail by Munir Bey, the Turkish Ambassador to Paris in May 1899[64]. Although lacking precise limits - and on that score being treated with a certain scepticism by both France and Great Britain - such a hinterland claim had rather more right to recognition, as the law stood at the end of the 19th Century, than a claim to a mere "zone of influence". For it was a claim to sovereignty, which the Anglo-French claim to a mere zone of influence was not.

7.58 Moreover, unlike the British and French, to whom in 1899 the borderlands were unknown territory, the Ottomans knew the territory and had already established some evidence of control. Munir Bey was able to cite the dispatch of military expeditions, of civil servants, magistrates and religious teachers; the fostering of the caravan trade; and the acceptance of the authority of the Sultan in Constantinople as "Caliph", as the leader of Islam. The Ottoman emissary, Muhammed Basala had been in close contact with the tribes and rulers of tribes as far south as Lake Chad by 1894[65].

7.59 Of the re-inforcement by Turkish forces of positions throughout the borderlands, in 1908-1913, in response to the French advance northwards from Lake Chad, there can be no doubt[66]. This is portrayed on Map LR 29, which appears below at paragraph 9.12. Certainly Chad rejects the notion that a purely military presence could confer title[67] (despite the implication this must have for the eventual French military "occupation"). But there is equally no question that the Ottomans had a rudimentary civilian administration in place. The French acknowledged the appointment of a Kaimakam in Tibesti in 1910[68], and the post of Kaimakam was that of a civilian administrator. In fact, the French Government expressed great concern over this development[69]. The French ambassador to Constantinople sent a full report to the French foreign minister, by letter dated 9 May 1911, confirming that a Kaimakam had been appointed for Bardai since 1908, supported by Turkish gendarmes from 1910 onwards[70].

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[62] The CC-M attempts to portray the Senoussi Order as non-Libyan because the founder of the Order, the Grand Senoussi, was born in Algeria. See, CC-M, para. 5.104. But all his descendants became unmistakably Libyan as were most of the sheikhs of the zawiyas appointed by the Head of the Order. See, Evans-Pritchard, E.E.: The Sanusi of Cyrenaica, Oxford, 1949, pp. 11-23. See, also, Supplementary Annex, No. 3, paras 4.1 - 4.9.

[63] See, CC-M, para. 5.19.

[64] See, LM, French Archives Annex, p. 61.

[65] See, LM, paras. 4.122-4.125.

7.60 The Ottoman system of administration, based on the 1861 Law of the Vilayets, envisaged each vilayet with its own Governor, and, under his authority were the Kaimakams and Mutassarifs (a Mutassarifik being a sort of district or arrondissement) who exercised both administrative and judicial functions[71]. However, the Ottoman system conferred on each district a large measure of self-government, so that the total picture of the administration of the territory emerges, not from the Turkish presence in isolation, but from the totality of the administrative system. And, whilst the Porte recognised the quasi-autonomy of the Senoussi, certain controls were maintained. When the European States complained of Senoussi activities, the Porte sent a delegation to Djaraboub in 1889 to inquire about these matters directly from the Head of the Senoussi[72]. The reports indicated his loyalty to the Caliph[73], and both by correspondence and by personal envoys to the Caliph[74] the Senoussi demonstrated their support of the Ottoman Caliphate. Thus, since Ottoman rule was accepted, the situation did not call for close supervision from Constantinople.

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[66] See, LM, paras 4.121-4.150; and see, Maps Nos. 34 and 35 in that section of the LM.

[67] See, CC-M, para. 5.56.

[68] See, CC-M, para. 5.60.

[69] See, Supplementary Annex, Nos. 9.2, 9.3, 9.4, 9.8, 9.9 and 9.10.

[70] See, Supplementary Annex, No. 9.10.

[71] See, Encyclopedia Britannica, 11th Ed. (1910-1911), pp. 427-428. See, also, LC-M, para. 5.29 and Exhibit 14 thereto.

[72] Al-Dajani, A., op. cit., p. 210.

[73] Ibid., pp. 213-214.

[74] Ibid., p. 210.

7.61 The system, as a system of *indirect* rule, was not essentially different from that used by other empires where vast and inaccessible territories were governed with a minimum of presence of the Imperial Power on the ground. The Spanish, Portuguese, French and British empires would offer analogous systems. Yet no one would have characterised the territories in question as *terra nullius*.

7.62 Indeed, in the present case, whilst scepticism was expressed about how far south the Ottoman *hinterland* might extend, no truly direct challenge to the Ottoman claim of sovereignty was made, even by the two Powers, Great Britain and France, which had the greatest interest in making that challenge. Great Britain was at pains to assure the Ottomans that the Anglo-French Declaration of 1899 did not prejudice their claims[75]. And France, far from directly challenging the Ottoman claim, merely supported France's own claim to the areas around Lake Chad itself, then in the process of occupation by France[76]; and as late as 1911-1912 France was not prepared to directly challenge the presence of Turkish troops in these borderlands[77]. To the west of the borderlands, in the region of Djanet, there was an actual confrontation between French and Italian forces resulting in a *status quo* agreement being reached[78]. In October 1911, the French Minister of Colonies reported to the French Foreign Minister that the construction of a blockhouse at Yao in Tibesti by the Turks "constituerait une manifestation indiscutable de l'occupation effective ottomane dans ces régions[79]". His concern was that Italy might succeed to the Turkish claims, and thus he argued for a study of how France might secure "nos droits" in these regions.

7.63 At the risk of repetition, it needs to be emphasised that, however limited the Ottoman presence, it far exceeded the purely military presence France brought to parts of these borderlands. Moreover there was a fundamental difference. The Ottoman presence was accepted, and even sought after, by the local tribes and the Senoussi. Thus, it was a peaceful occupation, which the French presence in the area was not until well into the 1930s[80]. Thus, Ottoman control could function by way of delegation. The Turkish authorities could, with confidence, leave much of the local administration in the hands of the tribal leaders, and the Senoussi, precisely because the voluntary acceptance of Ottoman authority permitted that degree of delegation. It was this loose partnership that Libya has described as "shared sovereignty", a term which Chad professes not to understand (and to which, therefore, the following section must be dedicated). But France could never rely on such delegation, for its authority was vehemently resisted. Accordingly, claims of title by France had to rely on French military force alone, as contrasted with the Ottoman claims resting on the combined administration of Ottoman, Senoussi, and tribal agencies.

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[75] *LM*, paras. 5.56-5.61.

[76] *LM*, paras 5.54-5.55.

[77] *LM*, para. 4.135, *et seq.*, *see*, esp., Map No. 35.

[78] *See*, *Supplementary Annex*, No. 9.1.

[79] *See*, *Supplementary Annex*, No. 10.3.

SECTION 6. The Nature of "Shared Sovereignty" in this Region

7.64 Chad professes to find "incoherent" Libya's thesis that sovereignty in the borderlands was shared between the indigenous tribes, the Senoussi, and the Ottoman Empire[81]. Obviously, it is easier for Chad to take each "partner" in turn, and to argue that neither the Turks, nor the local tribes, nor the Senoussi could separately have sovereignty than for Chad to argue that the effectiveness of the partnership between these three elements fell short of that required to support a sovereign claim of title to the territory.

7.65 Yet Chad's notion of sovereignty, of the powers of government being located in one person, is neither necessary nor in accordance with the experience of States. There is no inherent reason why title to the borderlands should not have resided in the local tribes, with the administration - the executive and judicial powers - being divided between the tribal leaders and the Senoussi, given that no real separation existed between the temporal and spiritual power, so that the spiritual leadership of the Senoussi gave rise, quite naturally, to leadership in such matters as education, commerce and dispute settlement[82]. The result was that, in sparsely-populated territory of desert and mountains, the Ottomans had no need to provide any overall, elaborate system of governmental administration. Being accepted by the local tribes, and with the Caliph in Constantinople commanding their spiritual allegiance, the Ottomans could govern in partnership with the tribes and the Senoussi, with minimal direct control.

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[80] For example, in 1933 a French expedition was sent to the Tibesti oasis of Modra, where resistance was being encountered, with the objective that Modra be "entièrement ruiné". See, Supplementary Annex, No. 7.4.

[81] CC-M, paras. 5.167-5.199.

7.66 Shared sovereignty can exist in many forms, and no rule of law dictates a particular distribution of the various powers that together constitute sovereignty[83]. Thus, there is no prescribed form of federalism: the distribution of powers between central and local units - be they cantons, provinces or states - is no concern of international law provided that, in the totality of powers exercised in partnership, the obligations of the State are fulfilled[84]. Equally, there is no standard or prescribed form of Protectorate, and each Treaty of Protection has provided for such distribution of powers between the Protecting Power and the protected territory as was deemed appropriate to the circumstances[85]. The Mandates system and its successor, the Trusteeship system, saw yet another form of "partnership", between indigenous people, administering authority and supervisory body (Council of the League, Trusteeship Council)[86]. The quite special relationship between the Holy See and Italy, embodied in the Lateran Treaties of 1929, illustrates yet another form of "partnership"[87].

7.67 A distinct type of shared territorial sovereignty has been known in international law under the term "condominium", characterised as a territory over which at least two States share sovereignty[88]. At various times, well-known, relevant examples of this State practice (albeit in different settings) have existed: in Schleswig-Holstein (after 1864); in Sudan (after 1899); New Hebrides (now Vanuatu, after 1906); and Memel and Danzig (after 1919).

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[82] See, Supplementary Annex, No. 3.

[83] See, Ago, R.: Yearbook of the I.L.C., Vol. 2, 1971, p. 1 at p. 276.

[84] See, Rudolf: "Federal States", 10 Encyclopedia of Public International Law, pp. 165-178; Reuter, P.: "Conféderation et Féderation: vetera et nova" in Mélanges offerts à Charles Rousseau, 1974.

[85] See, Crawford: The Creation of States, 1979, pp. 187-208; Venturini: Il Protettorato Internazionale, 1979.

[86] Bentwich: The Mandates System, 1930; Hall: Mandates, Dependencies and Trusteeship, 1948; Chowdhuri: International Mandates and Trusteeship Systems. A Comparative Study, 1955.

[87] See, Cardinale: The Holy See and the International Order, 1976.

7.68 Thus, given this abundant experience, there is no basis for Chad's ridicule of the notion of "partnership" or "shared sovereignty". It existed between the tribes, the Senoussi and the Ottoman Empire precisely because it was accepted and applied voluntarily by all three parties. That could not happen with France. For France came as a foreign conqueror, an alien power to be resisted by armed struggle.

SECTION 7. The Effect of the Treaty of Ouchy

7.69 If it is accepted that the borderlands were not terra nullius, but territory held under the joint or shared sovereignty of local tribes, Senoussi and Ottoman Empire, it follows that any claim of title by France must rest on conquest. The only way to avoid this conclusion would be to argue (although Chad does not so argue) that with the departure of the Turkish forces in 1913 a "vacuum" of sovereignty arose, which France was able to fill.

7.70 Such an argument is not tenable, however, given the terms of the Treaty of Ouchy of 15 October 1912[89]. The effect of this Treaty was to transfer to Italy the rights previously enjoyed by the Ottoman Empire over the territorial and personal rights subject to its control[90]. No "vacuum" could arise, therefore, and France was expressly excluded from refusing to acknowledge Italy's succession to Ottoman rights, both as a result of its recognition of Italian sovereignty over Tripolitania and Cyrenaica on 20 October 1912[91] and by Article 10 of the Treaty of London of 1915, under which:

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[88] See, Schneider, P.: Encyclopedia of Public International Law, Vol. 10, 1987, p. 58; El-Erian, A.: Condominium and Related Situations in International Law, 1952.

[89] See, LM, para. 5.130, et seq.; and para. 6.76, et seq., above.

[90] The transfer was not unconditional: it involved a reciprocal obligation on Italy to respect and observe the "autonomy" granted by the Firman to the inhabitants of Tripolitania and Cyrenaica and to respect certain rights retained by the Porte.

[91] See, para. 6.73, above.

> "All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy[92]."

7.71 The Treaty of Lausanne of 24 July 1923 confirmed Turkey's renunciation in favour of Italy of all its rights ("tous droits et titres")[93].

7.72 It necessarily follows, therefore, that the French military invasion of the borderlands was either aggression against Ottoman territory or against Italian territory, depending on whether the violation occurred pre- or post 1912. There was no interval of time during which France could have taken advantage of any "vacuum" in which sovereignty had lapsed.

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[92] See, para. 6.74, above.

[93] See, also, the reference to the Treaty of Sèvres of 1920 footnoted in para. 6.81, above.

CHAPTER VIII. THE FRENCH CLAIMS OF TITLE

8.01 In essence, Chad adopts the French claims of title, and Chad's Counter-Memorial reveals the complete identity between the tactics pursued by France in 1955 and Chad's tactics in this case. Chad seeks to shift attention away from the basis of title (what Chad disparagingly terms "titres historiques"[1]) and to focus the attention of the Court on the 1955 Treaty (le coeur du litige[2]). This had always been the French policy. Recognising the weakness of a claim of title - whether based on occupation or conquest - France sought to remedy that weakness in 1955 by persuading newly independent Libya to sign the 1955 Treaty, without any negotiations concerning Libya's southern boundary, in the hope that the provisions of Article 3 would create an illusion of title which the Libyans were unable to challenge. Today Chad adopts exactly the same tactic before the Court.

8.02 Libya has shown elsewhere[3] that in 1955 Libya did not intend to recognise any specific boundary in the south, or to recognise French title to any specific area of territory. Libya had neither the necessary knowledge nor the means of verifying any French claims, at that stage[4]. But quite apart from the fact that this was not the purpose of the 1955 Treaty, it is self-evident that France lacked the capacity to conclude a boundary treaty, endorsing the supposed 1899-1919 line, unless France had title to the territory to the south of that line. Thus, whatever view is taken of the 1955 Treaty, there is no way in which Chad can escape the obligation of showing that France was sovereign over all territory to the south of the line Chad now claims. The issue of title cannot be evaded.

SECTION 1. Chad's Misuse of the Notion of "Inter-temporal" Law

8.03 Chad suggests that Libya's arguments contradict the requirements of "inter-temporal" law[5]. In fact the position is the opposite. Libya has no quarrel with Max Huber's dictum that juridical acts must be evaluated in the light of the law prevailing at the time those acts were committed[6]. Libya does not, in fact, seek to apply legal principles - specifically the principle of the prohibition of the use of force - retroactively. For Libya the essential questions are the following:

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[1] CC-M, para. 3.01.

[2] See, CC-M, para. 3.03.

[3] See, LM, paras. 5.438-5.462; LC-M, paras. 3.03-3.33.

[4] See, also, Supplementary Annex, No. 6.7 (5).

[5] See, CC-M, paras. 3.02-3.06.

(i) Were the borderlands terra nullius at the time France started to invade part of them militarily?

(ii) If yes, did the actions of France constitute a sufficient occupation of the territory, in accordance with the law then prevailing, to confer a good legal title?

(iii) If no, did the actions of France constitute an unlawful acquisition of territory by force, in accordance with the law then prevailing, so as to negate any title claimed thereby?

It is clear that none of the above questions involves any reliance on the retroactivity of the rule outlawing the acquisition of territory by conquest, or, indeed, of any other rule. In the sections that follow the essential issues arising from these questions will be examined.

Section 2. The Nature and Extent of French Occupation (Effectivités) of the Borderlands

8.04 It is only if the borderlands were terra nullius that this question arises. As indicated in Section 1 of the previous Chapter, in Libya's view the evidence and the law suggest incontrovertibly that this was not the case. However, even if, arguendo, this were the case, there is in Libya's submission no evidence that the French presence constituted a sufficient, peaceful and continuous display of State authority over the territory in question. Both Parties agree that a purely military administration would not ground a good title[7].

8.05 Chad's evidence as to what France actually did is again set out in Chapter 6 and Chapter 9 of its Counter-Memorial. It amounts to this: only in 1913, after the Turkish units had been withdrawn[8], did France begin its military occupation of specific locations in Borkou and Ennedi: Aïn Galakka fell to the French in November 1913, Faya in December 1913, and also Gouro a few days later; Ounianga was not entered by the French until late December 1913. Regrettably, the CC-M has attempted to blur and even to mis-state the facts by use of a map appearing there at page 254. The striking misrepresentations on this map of the alleged "progression of French occupation" is illustrated here on Map LR 28: the left-hand map is Chad's erroneous map (on page 254 of the CC-M).

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[6] See, Island of Palmas Case, 11 U.N.R.I.A.A., at p. 845: "... a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises .... ."

[7] See, LC-M, paras. 9.24-9.27; CM, pp. 71-73, paras. 89-92.

8.06 The important elements in this narrative are, first, that the French invasion occurred after the Turkish troops had left, that is, it began in November 1913. This fact alone suggests the territory was not terra nullius. The Ottoman presence was clearly based on a claim of title, repeatedly asserted since the 1890's, and, moreover, it was a presence sought by, and co-ordinated with, the Senoussi. Nor was it a purely military presence, for the Ottoman Kaimakam was a civilian, not a military governor. Thus, though the Ottoman units were not large, they were part of a complex relationship of military, civil and religious authority which could realistically be regarded as an "effective occupation[9]". The French military incursions in 1913-1914 could not. They were entirely military and aimed at controlling a few strategic points. The French presence was resisted by the local population, and France made no pretence at providing any form of civil administration or government of the territory.

8.07 As regards Tibesti, the French incursion came from another direction, from French West Africa (the A.O.F.), and consisted of one column of troops. Having occupied Zouar on 13 December 1913 and Bardai in July 1914, and having sent reconnaissance patrols to Yoo, Kayougué, Wour and Aouzou, the French column was disbanded in October 1914[10]. What remained was a detachment of 80 men at Bardai, commanded by a French lieutenant and 3

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[8] Chad suggests that it was not the military strength of the Ottomans that caused the French military advance to halt, but rather a diplomatic concern not to embarass an ally. The reason matters little, although this suggestion in the CC-M lacks credibility. The fact is that the Ottomans were in possession of these borderlands, in alliance with the Senoussi and under a claim of title, until early 1913. See, CC-M, paras. 6.51-6.55.

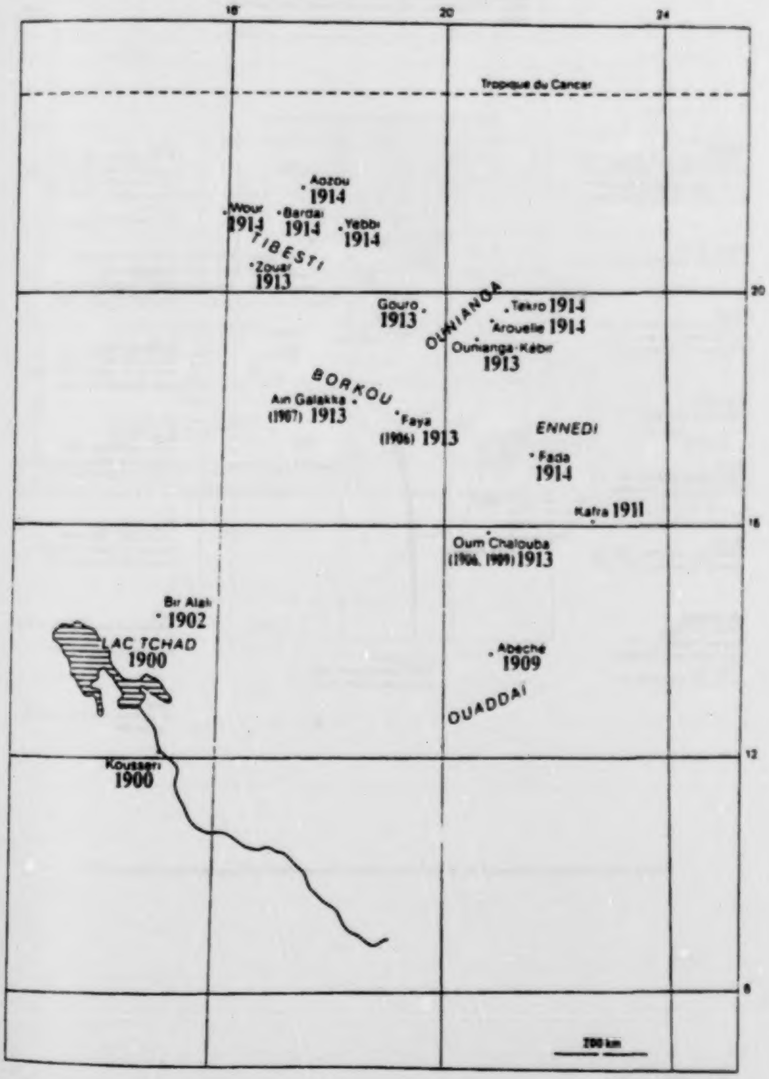
[9] See, para. 7.59, above.

[10] See, CC-M, para. 6.59.

LR 26

FALSE PICTURE OF FRENCH OCCUPATION OF THE BORDERLANDS

PROGRESSION DE L'OCCUPATION FRANÇAISE - 1900-1914


18°
20
24
Tropique du Cancer
Aozou 1914
Wour 1914
Bardai 1914
Yebbi 1914
TIBESTI
Zouar 1913
20
Gouro 1913
OUNIANGA
Tekro 1914
Arouelie 1914
Ounianga-Kébir 1913
BORKOU
Ain Galakka (1907) 1913
Faya (1906) 1913
ENNEDI
Fada 1914
Kalra 1911
16
Oum Chalouba (1906, 1909) 1913
Bir Alali 1902
LAC TCHAD 1900
Abeche 1909
OUADDAI
12
Kousseri 1900
8
200 km

Source: CC-M, p. 254.

THE FACTS

French forces did not start to move into borderlands (north of 15° N) before November 1913. Tibesti was not occupied until the start of 1930.

PROGRESSION DE L'OCCUPATION FRANÇAISE - 1900-1914

Aouzou
French column passes through: 1914
French first occupy: April 1930
French post unmanned: 1935-1937
Post vacated: Feb. 1938-April 1954

Wour
French post established: 1930

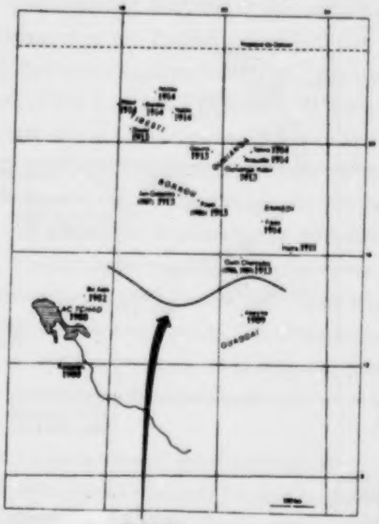
Bardaï
French post established: July 1914
Post abandoned: August 1916
French post reestablished: 1930

Yebbi Bou
French post established: 1930

Zouar
French post established: Dec. 1913
Post abandoned: August 1916

Gouro
French post established: Nov. 1914
Proposals to evacuate: 1914, 1916

Aïn Galakka
*French raid: 1907**
Ottoman occupation: 1911
French destruction of Zawiya: Nov. 1913
French post established: 1914



De facto line-
French forces moved north of line only in Nov. 1913

Tekro
French reconnaissance: 1914
French post established: Dec. 1933
Post evacuated April 1935 with assassination of French Chief of post.
Post abandoned: April 1941

Arouelle
French reconnaissance: 1914
No French post established

Ounianga Kebir
Post established: Dec. 1913
Proposals to evacuate: 1914, 1916
Post abandoned: July 1940

Faya
*French raids: 1906, 1908**
Ottoman occupation: until early 1913
French post established: 1913

Oum Chalouba
*French raids: 1906, 1909**
Ottoman occupation: 1912-1913
French post established: 1913

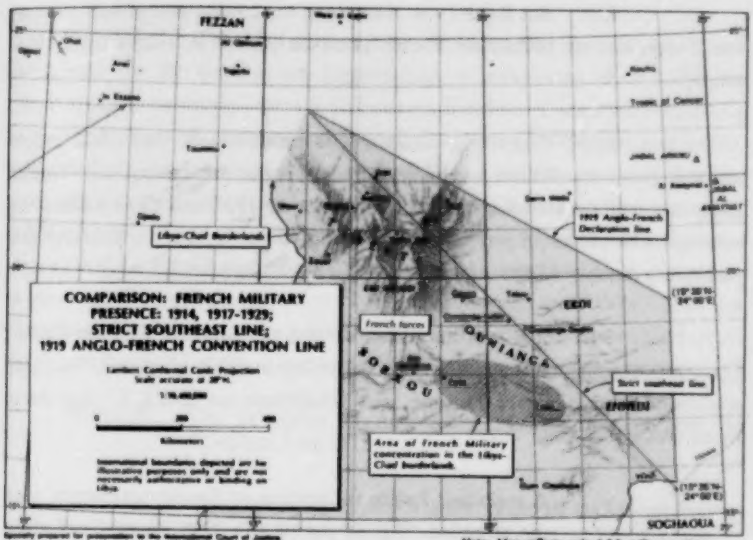
Fada
Ottoman occupation of nearby Bahi until March 1913.
French post established: 1914

Kalra
No evidence of French post being established

*French raids determined ineffectual by senior French military commanders. See, Supplementary Annex, No. 9.5.

LR 28

TRUE PICTURE
OF FRENCH OCCUPATION
OF THE BORDERLANDS


FEZZAN
Tropic of Cancer
JABAL ARKENU
Libya-Chad Borderlands
1919 Anglo-French Declaration line
COMPARISON: FRENCH MILITARY PRESENCE: 1914, 1917-1929; STRICT SOUTHEAST LINE; 1919 ANGLO-FRENCH CONVENTION LINE
Lambert Conformal Conic Projection
Scale accurate at 20°N.
0
200
400
Kilometers
International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya.
French forces
ERDI
OUNIANGA
BORKOU
Strict southeast line
ENNEDI
Area of French Military concentration in the Libya-Chad borderlands
SOGHAOUA

Specially prepared for presentation to the International Court of Justice

Note: Map reflects only A.E.F. military activity. A.O.F. occupied Zouar in December 1913 and Bardai in 1914, abandoning both posts in August 1916.

French N.C.O.'s; and a small detachment at Zouar - one section of camel-mounted troops, one section of riflemen, commanded by a French lieutenant and 2 N.C.O.'s[11].

8.08 But Bardaï was abandoned toward the end of July 1916, as was Zouar, and no permanent French presence existed in Tibesti from 1916-1929[12].

8.09 Given this account, it is extraordinary that Chad should seriously claim that France had exercised an "effective occupation" over Tibesti. Even as a military presence it scarcely existed after 1916, and Chad adduces no evidence whatsoever of any attempt to bring to the territory a peaceful and continuous display of State authority.

8.10 It is true that Chad devotes the whole of Chapter 9 of its Counter-Memorial to an attempt to prove the contrary. It is entitled "l'exercice continu de la souveraineté française, puis Tchadienne, sur le B.E.T." But this is based on the following:

- A supposed Italian recognition of French sovereignty over the so-called "B.E.T." during the 1919 Peace Conference (para. 9.07);
- A statement by a French Senator in 1920 (para. 9.09);
- A few words taken from a speech by Foreign Minister Tittoni to the Italian Parliament in 1919 (para. 9.12)[13];
- The evidence that Italy sought a "cession" of the "B.E.T." from France in the period 1928-1934 (paras. 9.14-9.21)[14].

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[11] See, CC-M, para. 6.75.

[12] The CC-M (para. 6.78) claims that Zouar was reoccupied in 1916, based on a statement in a book by Emile Gentil. This is overwhelmingly refuted by other evidence. See, General Serrigny's Report of 12 October 1928, LM, para. 5.259; see, also, Supplementary Annex, Nos. 11.3 and 11.4.

[13] On this, see, LC-M, paras. 4.192-4.195; see, also, para. 6.105, et seq., above.

[14] As to why Italy negotiated in these terms, see, para. 6.222, et seq, and 11.4, above.

Clearly, this is no evidence of effective occupation at all. That concept requires evidence of administration, of State activity, within the territory. Statements made in Paris or Rome cannot constitute effective occupation of the borderlands[15].

8.11 The conclusion must be, therefore, that even on Chad's own assumption that the territory was terra nullius - a assumption which Libya has shown above to be wrong - there is no evidence that France acquired a valid title to the borderlands via effective occupation in 1914 (or in 1919), as Chad claims. What we have is evidence of a very minimal French military presence at a few posts in Borkou and Ennedi, and virtually no evidence of even a military presence in Tibesti from 1916-1929. Until at least 1933, fighting between the indigenous peoples and the French continued. There is no real evidence of even an attempt at genuine, effective administration of the territory until the 1950's - after the critical date and Libyan independence. The result is that, whatever title France did acquire had to be acquired, not by occupation, but by military conquest.

SECTION 3. The Invalidity of Acquisition of Title to Territory by Conquest Post-1919

8.12 Chad seems undecided whether it should argue that France acquired the borderlands by way of conquest or by way of occupation. It is true that at one point the CC-M explicitly states that the alleged title was acquired on the basis of "occupation" and not on the basis of "conquest" in the narrow sense of the term[16], and that this legal view is, at least in the terminology used, repeated in subsequent passages of the CC-M[17]. However, in other parts of the same Chapter, a different position is expressed and the Chadian arguments refer to the French "conquest"[18]. Such inconsistent terminology is striking because the difference between occupation and conquest as modes of territorial acquisition is well-established and discussed in every treatise of international law. So it would appear that the confusion created in Chad's pleadings is intentional.

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[15] Chad's later evidence (CC-M, paras. 9.22-9.41) of French attempts to conduct a referendum in 1958, or to requisition land for military use in 1956-1957 (CC-M, para. 9.33) is wholly irrelevant to Chad's claim that France had acquired title by means of effective occupation as early as 1914 and, in any event, by 1919.

[16] CC-M, para. 6.04.

[17] CC-M, paras. 6.24, 6.42, 6.62 and 6.82.

[18] CC-M, paras. 6.08, 6.25, 6.56 and 6.72.

8.13 "Conquest" refers to acquisition of territory previously held by an entity recognised by international law as having title to the territory. "Conquest" also presupposes the use of force which brings an end to the resistance by the previous holder of title, and in case of partial annexation a treaty of peace is needed to complete the process of acquisition. In contrast to the specific legal regime of conquest, "occupation" refers to a situation in which terra nullius is effectively occupied, without further requirements.

8.14 Given these differences between conquest and occupation, it is not open to Chad to seek to evade qualifying the relevant French acquisition by treating the two concepts in an apparently interchangeable manner. As shown previously, the borderlands were not terra nullius, but were held in shared sovereignty, first by the indigenous peoples and the Ottoman Empire, and, later, by the indigenous peoples and Italy. Thus, the only way for France to acquire the lands was on the basis of conquest. However, the requirements of acquisition of title by conquest were not met. Resistance by those who held title was not overcome by France until long after conquest had become illegal, nor was any peace treaty concluded which would have transferred the territorial rights to France.

8.15 Chad does not argue that France was not bound by the obligation of Article X of the Covenant of the League or by the 1928 Pact of Paris. Chad argues that the obligations of France extended only to other States[19], and that Article X "... n'a rien à voir avec de futures acquisitions de titre sur des territoires, qui n'avaient pas encore acquis l'indépendance ..."[20]. In short, Chad's thesis is that "colonial" aggression remained lawful.

8.16 This highly unattractive thesis fails to take account of the view that entities lacking statehood could legitimately hold sovereign rights. If the Court's affirmation of that principle in the Western Sahara Case is correct[21], it becomes difficult to explain why, with the introduction of a rule of law prohibiting aggression, sovereign rights vested in States were protected by the principle, but sovereign rights vested in non-State entities were not.

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[19] In fact the terms of Article X contemplated not "States", but only "Member States". It is not clear whether Chad is suggesting that aggression remained permissible against non-Member States.

[20] CC-M, para. 3.45.

[21] Chad's insistence that in this case the Court made no finding as to the illegality of Spain's conquest of the Western Sahara is surely irrelevant. The Spanish conquest occurred long before the Covenant of the League (CC-M, paras. 3.09-3.10).

8.17 However, the central point - which Chad's thesis overlooks - is that the territory did belong to a sovereign State, moreover a member State of the League of Nations, namely Italy. For if the borderlands were under Ottoman possession until 1913, by claim of right as territorial sovereign, and if Italy succeeded to the Ottoman Empire's rights under the Treaty of Ouchy of 1912, as France expressly recognised at the time, and reaffirmed in Article 10 of the 1915 Treaty of London and in the Treaty of Lausanne of 1923, it follows that the borderlands were in fact State territory at all relevant times. It is no answer for Chad to suggest that the Treaty of Ouchy did not define the limits of the territory to which Italy succeeded: France knew that the borderlands were claimed by the Ottomans. The Ottomans had held these territories, civilly and militarily, until 1913, and France had halted its northerly expansion south of 15°N latitude as a matter of high French policy because of this Ottoman presence[22]. Thus, France knew that to penetrate further northwards would involve the invasion of the territory of a recognised State; and, in so far as Italy succeeded to the Ottoman Empire, that position remained unchanged.

8.18 The French military incursions post-1919 were fully subject to the prohibition of Article X of the Pact of the League of Nations, and thereafter to the 1928 Pact of Paris. And, in so far as the French military conquest was a continuing wrong - at no stage accepted by the indigenous population and converted into a peaceful occupation - France's breach of those treaty provisions was a continuing breach. In short, France never did acquire a valid title to the borderlands. As the CC-M admits, Italy protested these French military incursions, although in the context of the on-going negotiations between Italy and France.

8.19 In its Counter-Memorial, Chad misunderstands Libya's arguments concerning this notion of a continuing breach. In its Memorial, Libya had cited Max Huber's dictum in the Palmas Island Case to the effect that a State asserting title had to show not only that title had been validly acquired (i.e., in conformity with the law as it stood at the date of acquisition), but also that it had been maintained in accordance with the changing requirements of the law[23]. The classic example would be when a title acquired in the 16th Century by mere discovery would require the support of effective occupation in the 20th Century.

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[22] See, Supplementary Annex, No. 10.4

8.20 Chad sees Libya's reliance on this doctrine as a misapplication of inter-temporal law[24]. In fact, however, Libya does no more than repeat the normal principle that State conduct must be judged, as to its validity, by the prevailing law. In the present case, even if France had effectively conquered certain limited areas of the borderlands pre-1919, so as to acquire a title under the law then prevailing, France could not thereafter validly maintain that title by conduct which had become illegal. In short, whether France acquired new territory by conquest or continued to control territory previously conquered by military coercion, such conduct was illegal after 1919 and could not support a valid title. The concept of State conduct being continuously subject to scrutiny under the changing conditions of the law - and of "continuing breach" where those conditions are not met - is familiar enough in the context of de-colonisation. For no one doubted that the colonial titles were originally validly acquired. But with the evolution of the law, and the gradual recognition that the maintenance of a colonial title contrary to the wishes of the indigenous peoples was illegal, that original validity was lost. There is no reason why similar principles should not apply to the French acquisition and maintenance of title by conquest.

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[23] See, LM, para. 6.66.

[24] See, CC-M, paras. 3.13-3.18.

PART IV

CONSISTENCY OF CONDUCT AND THE ISSUE OF ACQUIESCENCE

CHAPTER IX. CONDUCT OF THE OTTOMAN EMPIRE, THE SENOUSSI, FRANCE, BRITAIN AND ITALY PRE-1945

SECTION 1. Introduction

9.01 This Chapter is devoted to a consideration of whether, on the assumption that there exists at present no conventional boundary east of Toummo, it is possible to maintain that, by reason of the conduct of one or more of the States or other entities from time to time exercising or claiming to exercise sovereign rights in or over the Libya-Chad borderlands, a settled boundary has come to be tacitly recognised. More specifically, it analyses, from this perspective, Ottoman conduct (up to 1913), Senoussi conduct, British conduct, French conduct and Italian conduct in the period up until 1945. It is useful at the outset of the discussion to summarize the conclusions reached in this Chapter.

9.02 As far as Ottoman conduct is concerned, it is demonstrated below that there is not a shred of evidence to support the view that the Ottoman Empire "acquiesced" in a French claim of title to the borderlands, a claim so flagrantly incompatible with the hinterland rights asserted by the Ottoman Empire in 1890 and again in 1899 and 1902 and so obviously at variance with the Ottoman civil and military presence in parts of the borderlands from 1908 onwards.

9.03 As far as Senoussi conduct is concerned, the evidence is clear that the Senoussi tribes in the borderlands offered fierce, determined and widespread resistance to the French military advance northwards in 1913-1914 and continued to attack the limited number of French garrisons and advance posts in the borderlands long after the end of World War I and indeed well into the 1930s. Far from "acquiescing" in the French attempt to take over their territories in the borderlands, the Senoussi, in conjunction with the indigenous tribes, offered prolonged resistance.

9.04 British conduct is more peripheral to the issue, since Britain never at any time exercised or claimed to exercise sovereign rights over the borderlands. But it is clear that Britain did not take the same view as France about the legal effect of the 1899 Declaration. The British view at the time was that, north of 15°N latitude, the 1899 southeast line was not intended to be a territorial boundary and that the Declaration as a whole could not affect the rights of third States. The British may have accepted, after 1919, that the Anglo-French Convention of 1919 created, as between Britain and France, a true east/west boundary as far north as the intersection of the southeast line with latitude 19°13'N, but otherwise their position remained unchanged. Throughout the period until 1945, Britain, although aware of conflicting French and Italian claims to title over the borderlands, refused to take a position on these conflicting claims.

9.05 French conduct has to be considered from the standpoint of whether it displayed inconsistencies as regards the French claim to title over the borderlands, based on the thesis that a conventional boundary had resulted from the combined effect of the 1899 Declaration, the 1900 and 1902 Franco-Italian Accords and the Anglo-French Convention of 1919. The most notable French flaws and inconsistencies were the following:

- Their repeated assertions that a map was annexed to the 1899 Declaration and that this map supported the French thesis as to the direction of the 1899 southeast line;

- The agreement of the French Government in 1911 and again in 1914 to enter into delimitation negotiations with the Ottoman Empire and, then with Italy - negotiations that would have included Libya's southern boundary - while subsequently maintaining that Libya's southern boundary had already been fixed conventionally (as least as far as Italy was concerned);

- The admission in the Exposé des motifs accompanying the draft French law authorising ratification of the 1935 Treaty of Rome that, prior to signature of that Treaty, there had been no conventional boundary between France and Italy east of Toummo, followed by subsequent French assertions that a boundary in this area had resulted from the combined effect of the 1899, 1900, 1902 and 1919 instruments mentioned above.

France did not seek at any time to rely on colonial effectivités as the basis of its claim to title over the borderlands.

9.06 Italian conduct displays no evidence of Italian "acquiescence" in the French interpretation of the nature or direction of the 1899-1919 southeast line during any part of the period between 1912 and 1945. There is no evidence of Italian "acquiescence" in French title to any part of the borderlands, save in the context of the boundary which Italy was reluctantly prevailed upon to agree with France in Article 2 of the 1935 Treaty of Rome, which failed to come into force. Italy took the view that the 1899 southeast line was intended to be a strict southeast line, challenged the French claim that the line had become a boundary line, and protested vigorously against the 1919 Anglo-French Convention and the 1924 Protocol and declaration, and equally protested against any French military incursion across the 1899 strict southeast line.

9.07 It is an integral part of the Chad thesis that Italy "recognised" a French sphere of influence extending up to the "frontier" of Tripolitania by virtue of the 1900-1902 Franco-Italian Accords, and that the northern and eastern limits of that French sphere of influence were constituted by the southeast line from Toummo to 24°E longitude described in the 1899 Declaration as "interpreted" (or, as Libya would contend, modified) by the Anglo-French Convention of 8 September 1919. The Chad thesis is then amplified to assert that Italy had, at some unspecified point of time, accepted in respect of Libya the line constituted by the 1919 Anglo-French Convention as the boundary between Libya and what is now Chad.

9.08 How Italy could, in 1900-1902 have accepted a "line" the course of which, even as between Britain and France, was fixed in 1919 (modifying the line fixed in 1899), is conveniently left unargued. Equally, Chad dodges the issue that not until after the 1912 Treaty of Ouchy did Italy have standing to agree a boundary with France concerning Libya[1].

9.09 Chad's thesis is the more striking, given the ample evidence on the record of vigorous and repeated Italian protests through the 1920s and early 1930s against the 1919 Convention. That France itself did not seriously espouse the view that the combined effect of the 1899 Declaration, the 1902 Accord and the 1919 Convention was to establish a boundary as between Libya and what is now Chad is confirmed beyond a peradventure:

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[1] As Chapter VI has demonstrated, the 1900-1902 Accords and the 1912 Franco-Italian Agreement, entered into shortly after the Treaty, were in any event not concerned with fixing boundaries.

- By the terms of Article 2 of the 1935 Treaty of Rome, where it is stated that the boundary separating Libya from the A.O.F. and the A.E.F. "sera déterminée" as follows[2]; and

- By the terms of the *Exposé des motifs* accompanying the French draft law authorising ratification of the Treaty of Rome of 1935, where it is clearly admitted that the 1919 Franco-Italian Agreement left Italy and France without a conventional boundary to the east of Toummo[3].

9.10 But assuming that no such conventional boundary had been established prior to 1935, assuming also that, as both Chad and Libya agree, the boundary line stipulated in Article 2 of the 1935 Treaty never took legal effect as a result of the failure of the two States concerned (France and Italy) to exchange instruments of ratification of the Treaty, and assuming finally that the 1955 Treaty did not itself determine Libya's southern boundary east of Toummo: is it possible to maintain that, by reason of the conduct of one or more of the States or other entities from time to time exercising or claiming to exercise sovereign rights in or over the Libya-Chad borderlands, a settled boundary had come to be tacitly recognised? In this Chapter, Libya will assess the conduct of all interested parties prior to 1945 from this perspective - that is to say the conduct of the Ottoman Empire, the Senoussi, Britain, France and Italy. In Chapter X, Libya will similarly assess the conduct of all interested parties, including France, Italy, the Four Powers and the United Nations, in the period between the close of World War II and the advent of Libyan independence in 1951. Finally, in Chapter XI, Libya will analyse the significance of Libyan and Chad conduct since 1951 from this point of view.

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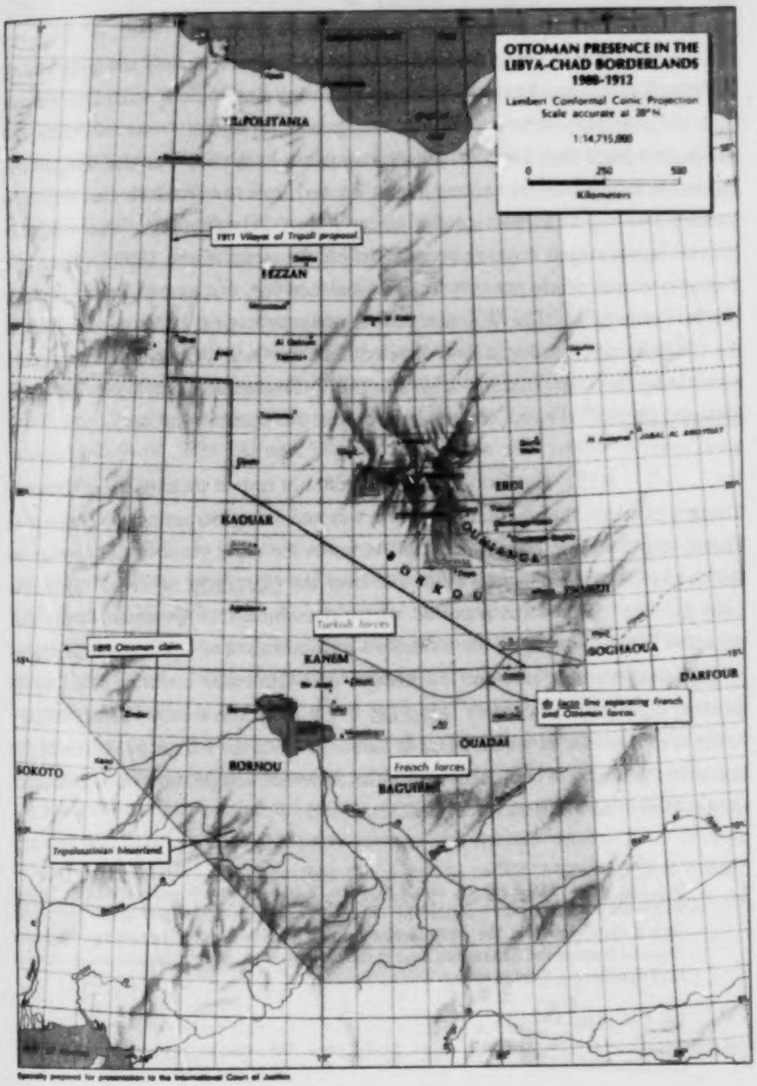
[2] *See*, *LM* paras. 5.331 and 5.332; *see*, also, para. 6.213, above.

[3] *See*, *LM*, paras. 5.335-5.338. Note also that the British Foreign Office took the view that, prior to the negotiation of the 1935 Treaty, Libya's southern boundary had not been determined: *see*, *LM*, paras. 5.340 and 5.341.

LR 29


OTTOMAN PRESENCE IN THE LIBYA-CHAD BORDERLANDS 1908-1912
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,715,000
0
250
500
Kilometers
TRIPOLITANIA
1911 Vilayet of Tripoli proposal
FEZZAN
JABAL AL ARKINUT
ERDI
KAOUAR
OUNIANGA
BORKOU
ENNEDI
Turkish forces
1890 Ottoman claim
KANEM
ZOGHAOUA
DARFOUR
de facto line separating French and Ottoman forces
OUADAI
SOKOTO
BORNOU
French forces
BAGUIRMI
Tripolitanian hinterland

Specially prepared for presentation to the International Court of Justice

Section 2. Ottoman Conduct

9.11 Ottoman conduct prior to 1912 is relatively straightforward. In 1890, the Ottoman Empire vigorously protested the Anglo-French Declaration of 5 August 1890, whereby Britain recognised a French "zone of influence" southwards from their Mediterranean possessions to the Say-Barroua line, on the ground that this was an encroachment on territories over which the Ottoman Empire had rights as part of the hinterland of Tripolitania[4]. The Ottoman Empire again lodged a strong protest against the terms of the 1899 Declaration. The protest was made not only in Paris and London, but also in Berlin, Vienna and St. Petersburg[5]. The Ottoman protest was repeated on 12 March 1902, when the Ottoman ambassador in Paris handed in to the Quai d'Orsay a memorandum elaborating on the reasons why the 1899 Declaration infringed Ottoman hinterland rights[6]. France returned no reply to this communication.

9.12 But Ottoman conduct did not stop at making paper protests. There is evidence that the Sublime Porte was becoming increasingly concerned at French expansionism in north/central Africa in the early years of the century to the detriment of Ottoman rights in and over the hinterland of Tripolitania. As early as 1901-1902, it was reported that a detachment of Ottoman forces had occupied Bilma[7]. In 1906, the Ottomans were installed at Djanet, and a modus vivendi was reached between the French and Ottomans covering that region pending diplomatic settlement (Map LR 29)[8]. With the steady French military advance towards the northern oases of Kouar in 1907, the indigenous tribes of the borderlands, acting in conjunction with the Senoussi, sought, and were accorded, the protection of Ottoman forces[9].

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[4] See, LM, paras. 5.09-5.15: see, also, LM, paras. 4.46-4.49. It will be recalled that Britain and France had sought to soften the Ottoman protest by exchanging notes placing on record their view that the 1890 Declaration "... does not affect any rights which His Imperial Majesty the Sultan may have in the regions which lie on the southern frontier of his Tripolitanian dominions".

[5] See, LM, paras. 5.49-5.55.

[6] See, LM, para. 5.77.

[7] See, LM, paras. 5.78, 5.80 and 5.81.

[8] See, also, Map LR 17, referred to at para. 6.121, above, and Supplementary Annex, No. 9.1.

[9] See, LM, paras. 4.126 and 4.127.

9.13 There is clear evidence of an Ottoman political and military presence in Tibesti from early 1908 onwards, in Borkou from 1911 onwards, and in Ennedi from 1912 onwards. There is likewise clear evidence of the steps taken on the ground by local Ottoman and French military commanders to avert conflict between forces under their respective commands. The correspondence between Captain Rifky (the Ottoman commander at Aïn Galakka) and Colonel Largeau (the French commander at Fort Lamy) in 1911, particularly after the outbreak of war between Italy and the Ottoman Empire in September, 1911, confirms that a temporary modus vivendi was arranged in this region (as in the region of Djanet) whereby the status quo (including the continued presence of Ottoman troops and officials in the posts which they then occupied in Tibesti, Borkou and Ennedi) would be maintained until the end of the Italo-Turkish war[10] (Map LR 29). It was only after the conclusion of the Treaty of Ouchy in October, 1912, that the Ottoman forces began to withdraw and the French felt able to resume their advance north of 15°N latitude, although this move was further delayed until November 1913[11].

9.14 It will of course be recalled that part of the background to these developments on the ground was that France and the Ottoman Empire had agreed in 1911, following the successful outcome of the Franco-Ottoman negotiations in 1910 to delimit the boundary between Tripolitania and Tunisia, to form a mixed commission to continue the delimitation of the boundaries of their respective territories in the Sahara and the Sudan beyond Ghadamès. As a result of the outbreak of the Italo-Ottoman war in 1911 and the subsequent defeat of the Ottoman forces in Tripolitania in 1912, this mixed commission never met; but the evidence establishes that the modus vivendi on the ground in the borderlands (as well as in the area of Djanet) was reached with the insistence of Paris because it was anticipated at the time that the question of the boundary with French territories south and east of Ghadamès would be resolved shortly through the work of this Franco-Ottoman mixed commission[12].

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[10] See, LM, paras. 4.142-4.150; and LC-M, paras. 5.25-5.28. See, also, Supplementary Annex, Nos. 10.12 and 11.3.

[11] See, LC-M, para. 5.29. See, para. 8.05, above, and Map LR 28, for a discussion of the false picture the CC-M portrays of France's advance into the borderlands, trying to play down the modus vivendi reached generally along 15°N latitude.

[12] See, LM, paras. 5.113-5.116; and LC-M, para. 4.140.

9.15 There is accordingly not a shred of evidence deriving from Ottoman conduct that would support any view that the Ottoman Empire or its representatives in Tripoli or in the borderlands had ever "acquiesced" in a French claim of title to the borderlands, a claim so flagrantly incompatible with the hinterland rights asserted by the Ottoman Empire in 1890 and again in 1899 and 1902. By the time Ottoman forces evacuated Tibesti, Borkou and Ennedi in 1913, they had been, together with the Senoussi and the indigenous tribes owing allegiance to the Senoussi, in effective occupation of large parts of the borderlands for periods of some five years. Furthermore, even the compromise proposal recommended by the vilayet of Tripoli to the Porte in 1911 as the basis for the Ottoman position in the planned negotiations within the Franco-Ottoman mixed commission would have left almost all of the borderlands on the Ottoman side of the line[13]. Thus, it cannot seriously be maintained that the Ottoman Empire had at any time admitted any French claim of title to the borderlands[14].

SECTION 3. Senoussi Conduct

9.16 If Ottoman conduct prior to 1912 is relatively straightforward, Senoussi conduct through the period in which they played an active role in the borderlands is equally so. In the latter years of the 19th Century, the Senoussi had acquired a powerful religious and secular influence over the indigenous tribes of the borderlands, partly as a result of their proselytising activities and partly as a result of the educational and mediating role which they played in seeking to settle disputes among the various tribes whose home was in the borderlands[15]. Even Chad, in its Memorial, correctly acknowledges that, at that time, and at least until 1912, it was the Senoussi who exercised sovereign rights in and over the borderlands[16].

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[13] See, LM, paras. 4.140 and 4.141, together with Map. No. 35. See, also, paras. 7.59 and 8.06, above, where it is brought out that the Ottomans installed civil administration in this region, unlike the subsequent, purely military, French presence; furthermore, that the Ottomans had been welcomed by the Senoussi peoples while the French invasion was bitterly contested.

[14] See, also, LC-M, paras. 8.62 and 8.63.

[15] For a description of these various nomadic tribes and tribal groups, see LM, paras. 3.34-3.43; for a general account of the unique role played by the Senoussi in the region in the late 19th Century and early 20th Century, see, LM, paras. 1.22-1.30, and 3.12-3.19; and for a more detailed account of how the Senoussi exercised their authority in the borderlands, and indeed throughout the region as a whole, see LM, paras. 3.44-3.71. See, also, LM, para. 4.78 for comment on Ottoman-Senoussi relations, and LM, paras. 4.89-4.98 and 4.103-4.112, for the role played by the Senoussi in organising the resistance of the indigenous tribes to French advances north of Lake Chad. See, also, Exhibit LR 12 and Supplementary Annex, No. 3, for independent studies of the matter.

9.17 Admittedly Chad seeks to go back on this admission in its Counter-Memorial by denying that the Senoussi, although having a certain structure and a certain degree of social organisation, were sufficiently organised as an entity to be able to acquire title to the borderlands[17]. Chad then seeks to develop the imaginative (but fallacious) theory that a distinction can be said to exist between a "territorial title" inhering in the indigenous peoples of the lands which they occupy (deriving from customary tribal law) and a "sovereign title" (deriving from the international law of the time)[18]. Chad cites no authority for this theory, which in any event fails to explain how, and in what manner, the asserted "sovereign title" could displace the "territorial title" in the absence of agreements with the leaders of the indigenous peoples. The flaws in Chad's arguments have already been demonstrated in the previous two Chapters[19].

9.18 Where Chad falls into error yet again is in denying the continued relevance of the original title shared between the Senoussi and the Ottoman Empire after the events of 1912. Senoussi conduct after 1912 cannot be represented as amounting to capitulation to the territorial designs of the French in the borderlands or as any "acquiescence" in the establishment of French title to the borderlands. Indeed, the evidence demonstrates that the Senoussi tribes offered widespread and determined resistance to the French military advance northwards in 1913-1914, and continued to attack French garrisons or advance posts in the borderlands long after the end of World War I, and indeed up until the early 1930s[20]. It is a travesty of the historical record for Chad to claim that by 1919 (when French forces had been withdrawn from Tibesti and exercised at most a precarious and sporadic control through a post established in other parts of the borderlands) France had peacefully occupied the whole of Borkou, Ennedi and Tibesti up to the 1919 line[21]. Far from "acquiescing" in the French attempt to take over their territories in the borderlands, the Senoussi, in conjunction with the indigenous tribes, fought the French tooth and nail; and this struggle continued long after the Ottoman withdrawal in 1913. Moreover, the Senoussi found themselves with the problem of organising the indigenous peoples' defence on two fronts: in the south against the French; and in the north against the Italians.

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[16] See, CM, p. 254, para. 177; and, p. 19, para. 12.

[17] See, CC-M, para. 3.07.

[18] See, CC-M, paras. 5.16 to 5.18.

[19] See, paras. 7.57, et seq., and 8.12, et seq., above.

[20] See, LC-M, paras. 5.35-5.95. See, also, Supplementary Annex, Nos. 7.2 and 7.4.

[21] The CC-M even attempts to move up the date of alleged French occupation to 1914, presumably to try to show that on the eve of delimitation negotiations with the Italians,

SECTION 4. **British Conduct**

9.19 Throughout the period until 1945, British conduct was reasonably coherent, though it did display some inconsistencies. In 1899, British policy in Africa was dominated by the need to establish a barrier against French colonial expansion eastwards to the Nile Valley where the British position in Egypt and the Anglo-Egyptian Sudan had been seriously threatened by the Fachoda incident of the previous year. This is in itself sufficient to explain the British interest in agreeing with France a line to the northeast of Lake Chad which would effectively place a limit on French expansionist policies in north-central Africa. The British certainly did not regard the southeast line described in Article 3 of the 1899 Declaration as a territorial boundary. Neither Britain nor France were in occupation of territory anywhere near the course, or approximate course, of the southeast line. But Britain did have designs on Darfour, which it regarded as appertaining to the Anglo-Egyptian Sudan. There was no agreed boundary between Darfour and Ouadaï which lay to its west. Equally there was no agreed boundary between the French Congo possessions and that part of the Anglo-Egyptian Sudan lying to the south of Darfour. Thus, part of the object and purpose of the 1899 Declaration was to establish a true east/west frontier between French possessions south of 15°N latitude and the Anglo-Egyptian Sudan, and part was to place a limit on French expansionism to the north and east of the southeast line described in Article 3.

9.20 Although it proved possible during the 1899 negotiations to fix the boundary between approximately 5°N and 11°N, it was not possible to determine the boundary between Darfour and Ouadaï; it was therefore agreed that this task should be entrusted to a mixed commission, which would have the task of delimiting that portion of the boundary in an area between Darfour and Ouadaï stretching from approximately 11°N to 15°N and lying between 21°E and

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which in the event never occurred, French forces were in firm control of the borderlands. This is totally refuted by the evidence set out in the LM, LC-M and here. See, e.g., para. 8.05, above, and Map LR 28.

23°E. Article 2 of the 1899 Declaration dealt with the boundary south of 15°N; and Article 3 described the southeast line as running from the point of intersection of the Tropic of Cancer with 16°E longitude southeast to 24°E longitude and then following 24°E longitude until it met, to the north of 15°N latitude, the frontier of Darfour as eventually fixed.

9.21 Libya has analysed in great detail the *travaux préparatoires* of Article 3 of the 1899 Declaration, and the matter has been taken up once more in Chapter VI above[22]. The story is a complex one; and the record has become somewhat blurred as a result of the confusion created by the *Non-Annexed Map* and the uncertain state of geographical knowledge at the time. However, as Libya has demonstrated, the *travaux* do disclose that the intended direction of the southeast line in Article 3 was *true* southeast to intersect with 24°E longitude just to the north of 15°N. Certainly, Britain regarded it as a true southeast line at the time, as is evidenced by the British War Office maps of 1906 (revised to 1913), 1914 and 1916[23].

9.22 A factor which influenced British conduct in 1899 (and indeed in subsequent years) was the concern that the southeast line described in Article 3 of the Additional Declaration might be regarded by the Porte as an infringement of Ottoman rights over the *hinterland* of Tripolitania and Cyrenaica. Lord Salisbury was well aware that, only nine years previously, the Ottoman Empire had staked out a far-reaching *hinterland* claim and had notified it to Britain and France. Lord Salisbury was also anxious about Italy's reaction, since it was known that Italy regarded itself as the potential successor to Ottoman rights in Tripolitania and Cyrenaica. These concerns were voiced to M. Cambon at several stages during the negotiation of the 1899 Additional Declaration.[24] A study of the *travaux* reveals that it was the British, much more than the French, who were anticipating, and wished to soften the effect of, potential Ottoman and Italian protests and expressions of concern.

9.23 This is indeed confirmed by the explanations which the British subsequently gave in response to Ottoman and Italian representations.

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[22] *See*, *LM*, paras. 5.19-5.48; *LC-M*, paras. 4.14-4.72; *see*, para. 5.75, *et seq*., above.

[23] *See*, *LC-M*, para. 4.18, and *Maps LC-M* 14A and 14B; *see*, also, *LM*, para. 5.182 and Map No. 63.

[24] *See*, *LM*, paras. 5.21-5.22, 5.25, 5.27 and 5.32.

The most complete and significant explanation is that given in the 1902 Anglo-Italian Accord[25]. It will be seen that Britain specifically assured Italy that, to the north of 15°N latitude, the line described in the 1899 Declaration represented merely the limit beyond which the French Government would not at any time advance its pretensions; and equally assured Italy that the provisions in which this limit was laid down were carefully worded so as to avoid bringing into question either the existing rights of other Powers or any prospective claim which they might later put forward[26]. Even more specifically, Britain declared to Italy on 11 March, 1902, inter alia, that the 1899 Declaration ".... in no way purported to deal with the rights of other Powers, and that, in particular, as regards the vilayet of Tripoli and the Mutessarifik of Benghazi, all such rights remain entirely unaffected by it"[27].

9.24 Thus, the British view of the legal effect of the 1899 Declaration differed radically from the French view as it was subsequently to be developed. The British view was that, north of 15°N latitude, the 1899 southeast line was not intended to be, and indeed could not be, a territorial boundary, and that the Declaration as a whole could not affect the rights of other non-signatory Powers. This was the view consistently maintained by Britain in subsequent years, notably in the exchanges between Britain and France in the early 1920s when these two States were seeking to prepare a concerted response to the Italian protest against the Anglo-French Convention of 8 September 1919[28].

9.25 That Britain and France were anxious to conceal their differences when responding to the Italian protest against the 1919 Convention is only natural. But this in no way implies, as the CC-M appears to suggest[29], that the British and French views on the effect of the 1899 Declaration were identical or even complementary one to another. A close study of the record reveals the contrary.

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[25] See, LM, paras. 5.59 and 5.103-5.110; and LC-M, paras 4.97-4.105.

[26] See, LM, para. 5.105.

[27] Cited at LM, para 5.107.

[28] See, LM, paras 5.192-5.214; LC-M, paras 4.203-4.218; see, also, para. 6.187, et seq., above.

[29] CC-M, paras. 8.65-8.75.

9.26 In the *CC-M*, an attempt is made to argue that the effect of the 1919 Anglo-French Convention, coupled with the effective French occupation of her "zone" up to the 1899 line, was to transform what had hitherto been a line dividing the limits of spheres of influence into a true boundary. Quite how this miracle was achieved is nowhere made clear. The most that can plausibly be argued is that, *as between Britain and France*, the 1919 Convention established an *east/west* boundary between Darfour and Ouadaï, and extended that boundary northwards from 15°N latitude along 24°E longitude to 19°30' N latitude, which was "interpreted" to be the terminal point of the famous southeast line described in Article 3 of the 1899 Declaration[30]. In no sense at all can it be argued that the 1919 Convention altered the *character* of the southeast line described in Article 3 of the 1899 Declaration; it merely modified its direction (under the guise of "interpretation") as between the parties alone. This is amply confirmed by the attitude which the British side took during the negotiations preceding signature of the Italo-Anglo-Egyptian Exchange of Notes of 20 July 1934, relating to the Sarra triangle. Libya has produced a full account of those negotiations[31]. Two points are particularly worthy of attention:

- The internal Foreign Office memorandum of 16 November, 1933, in describing the Sarra triangle, states that "... the line fixed in the Anglo-French agreement of 1919 represented the southerly limit of a triangle in which His Majesty's Government *might wish to acquire territory or political influence*"[32], thereby confirming that, even after 1919, the southeast line described in Article 3 of the 1899 Additional Declaration (as "interpreted" in 1919) was *not* regarded by Britain as a territorial boundary.

- Britain, being aware of the continuing dispute between France and Italy about the course of Libya's southern boundary with French possessions east of Toummo, specifically dissociated itself from taking any position on that dispute by agreeing that the southern terminal point of the Libya-Sudan boundary should be on the 24th meridian at "... its junction with the frontier of French possessions." Accordingly, Britain clearly did not take the position that the terminal point of the southeast line (in its 1919 version) at the point of intersection of 19°30'N with the 24th meridian was opposable to Italy, the question of where should be the junction of the Libya-Sudan boundary with the frontier of French possessions being left over for further negotiations between Italy and France[33].

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[30] *See*, para. 5.09, *et seq*., for a fuller discussion of the 1899 Declaration.

[31] *See*, *LM*, paras. 5.284-5.302; and *see*, also, *LC-M*, paras. 4.230-4.242, rebutting the totally unfounded Chadian argument that, by concluding this Exchange of Notes, Italy had somehow succeeded to British rights and obligations under the earlier Anglo-French agreements of 1899 and 1919.

[32] Cited in *LM*, para. 5.289. Emphasis added.

9.27 It will be recalled, in further confirmation of this consistent British position, that the Foreign Office took the view that the Treaty of Rome of 1935 had, for the first time, determined a frontier in the area where southern Libya meets French Equatorial Africa - that is to say, in the area east of Toummo[34].

9.28 Thus, it is clear that Britain never accepted the 1899 southeast line (even as "interpreted" in 1919) as a territorial boundary between Britain and France. At most, it may have come to be thought of as a line dividing spheres of influence, without any impact on the rights of other interested Powers such as the Ottoman Empire and Italy, although even this concept is complicated by the fact that Egyptian, not British, sovereign rights were concerned to the northeast of the line. How a line (or, rather, differing lines because of the disparities between the 1899 and 1919 lines) of this nature can be regarded as a "boundary" line between two Powers, one of whom consistently denies that it was a boundary, defies legal analysis. Britain was throughout the period up until 1945 fully aware that there were conflicting claims of title by France, on the one hand, and by the Ottoman Empire and Italy, on the other hand, to the borderlands between Libya and what is now Chad. But Britain steadfastly refused to take a position on these conflicting claims, and there is nothing in Britain's conduct, beyond the occasional sceptical comment about the extent of the Ottoman hinterland claim advanced in 1890 and the occasional doubt expressed about the strength of Italian claims based on Ottoman occupation of the borderlands between 1908 and 1912, to suggest that Britain was taking a position on these conflicting claims to title in and over the borderlands[35].

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[33] The CC-M's Map Atlas, No. 27, reproduces a part of the map accompanying the 1924 Anglo-French Protocol delimiting this boundary between France and Great Britain north to 19°30'N latitude and speculates that this "consacre officiellement la reconnaissance anglaise de la limite Nord-Est du Tchad". The 1934 Exchange of Notes destroys entirely any such contention.

[34] See, citations from British documents at LM, para. 5.341.

SECTION 5. French Conduct

9.29 French conduct up to 1945 is marked by notable inconsistencies, which must cast doubt on the credibility of the French thesis, maintained up until 1955, that a conventional boundary between Libya and what is now Chad had resulted from the combined effect of the 1899 Declaration, the Anglo-French Convention of 8 September 1919, and the Franco-Italian Accords of 1900 and 1902. The most flagrant example of French inconsistency of conduct, amounting effectively to a distortion of the truth, are the repeated French assertions that a map (the notorious Livre Jaune map) had been annexed to the 1899 Declaration[36]. An almost equally flagrant example of French inconsistency of conduct is the continuing French assertion, following the refusal of Italy to exchange ratifications of the 1935 Treaty of Rome in 1938, that the boundary between Libya and what is now Chad had reverted to that which resulted from these four instruments, notwithstanding that in the Exposé des motifs accompanying the draft French law authorising ratification of the Treaty of Rome, it is specifically stated that the Franco-Italian Agreement of 12 September 1919 had left France and Italy without a conventional boundary east of Toummo[37].

9.30 Quite how the failure of the 1935 Treaty to enter into force could transform what the French Government of the time had acknowledged to be, immediately following the signature of the Treaty, the absence of a boundary between Libya and French possessions east of Toummo into a boundary deriving from instruments which, in the Exposé des motifs, France had acknowledged had not been accepted by Italy as determining a territorial frontier, is nowhere

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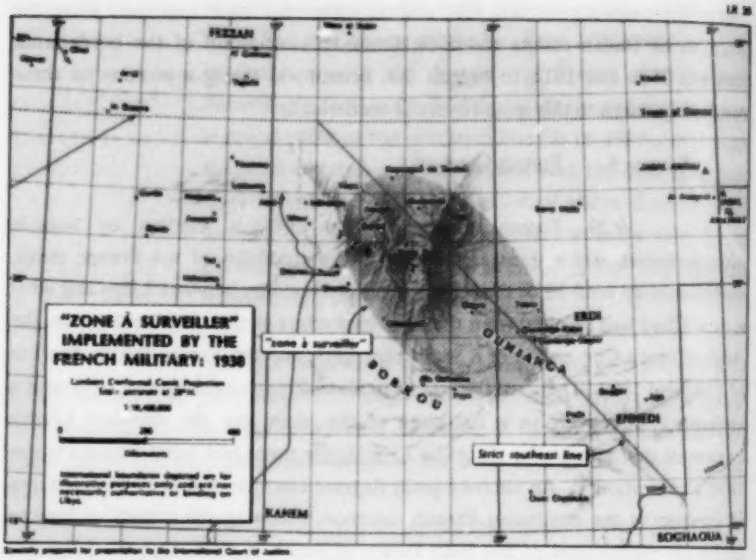
[35] British skepticism can be traced to an incomplete knowledge of the extent and nature of Ottoman occupation of the borderlands at the time, an understandable failure given the lack of knowledge of the region possessed by Great Britain and France.

[36] See, LM, paras. 5.29, 5.31, 5.85, 5.91, 5.92, 5.94, 5.96 to 5.98, 5.189, 5.197, 5.207, 5.210, 5.263, 5.392 and 5.393; see, also LC-M, paras. 4.50-4.72 and 7.10-7.19. As the map appearing in the CC-M's Map Atlas as Map 32 shows, even in 1925, Italy was not aware that no map had been annexed to the 1899 Declaration.

[37] See, LM, paras. 5.336-5.338; and LC-M, paras. 6.27-6.35.


FEZZAN
"ZONE À SURVEILLER" IMPLEMENTED BY THE FRENCH MILITARY: 1930
0
200
400
Kilometers
"zone à surveiller"
BORKOU
OUNIANGA
ERDI
ENNEDI
Strict southeast line
KANEM

explained. The significance of what is admitted in the Exposé des motifs is particularly illuminating, given that, at the time when it was submitted to the French Parliament, the French Government had high hopes that the Treaty would be ratified by both France and Italy, thereby delimiting for the first time a true boundary between Libya and French possessions east of Toummo, and could therefore afford to be more frank and open about the previous absence of a boundary in this area.

9.31 Leaving aside for the moment the frank admission by the French Government in the Exposé des motifs accompanying the French draft law authorising ratification of the Treaty of Rome of 1935, the one relatively constant theme in the French position vis-à-vis Italy in the 1920s and 1930s was that the boundary between Libya and what is now Chad had been laid down in the 1899 Declaration as "interpreted" in 1919 and that the line so laid down was opposable to Italy by virtue of the 1902 Franco-Italian Accord[38]. France did not seek at this stage, nor indeed did she do so subsequently in the Franco-Libyan negotiations in 1955, to rely on French colonial effectivités as giving her title in and over the borderlands. In this major respect, the case now advanced by Chad differs from the pre-1945 position taken by France.

9.32 It is nonetheless interesting that Chad now appears to rely, inter alia, as an element supporting or sustaining French title to the borderlands, on a claim that, by 1919, French forces had occupied all the territories on the French side of the 1899-1919 southeast line. This claim is unfounded on the facts[39]. It was not indeed until 1930 with the establishment of a French "zone à surveiller" in northern Tibesti that we begin to see the first signs of French military posts being installed north of a strict southeast line; and it is significant to note that this provoked an immediate Italian protest on 19 May 1930[40] (Map LR 30).

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[38] See, para. 6.125, above, where it is shown, citing Prof. Rouard De Card, that this French thesis was first devised in 1913-1914.

[39] See, LC-M, 5.40, et seq.; and para. 8.05, et seq., and Map LR 2a, above.

[40] See, LC-M, paras. 5.77 and 5.78

SECTION 6. Italian Conduct

9.33 Italian conduct throughout the period up to 1945 displayed a high degree of consistency. Italy regarded herself, in consequence of the conclusion of the Treaty of Ouchy in 1912, as having inherited all Ottoman rights and claims in respect of the territory of Libya as a whole (*i.e.*, Tripolitania, Cyrenaica, Fezzan and the borderlands). Prior to 1912, of course, Italy had an *interest* in Libya, since she regarded herself as the potential successor to the Ottoman Empire as sovereign over the territory; but Italy had, at that time, no formal status in or in relation to Tripolitania, Cyrenaica and the Tripolitanian-Cyrenaican *hinterland*. Accordingly, the Franco-Italian Accords of 1900 and 1902 were *political*, and not *territorial*, agreements since Italy had no authority at the time to determine with a third power the limits of Ottoman territory.

9.34 Libya has already disposed decisively of Chad's arguments that, by the Franco-Italian Accords of 1900 and 1902:

- Italy had recognised a French zone of influence extending up to the Tripolitanian boundary[41];
- Italy had accepted the 1899 southeast line[42];
- Italy had accepted the Tripolitanian boundary[43];
- Italy had renounced the rights of the Ottoman Empire[44].

These arguments are again refuted in Chapter VI, Section 3, above.

9.35 All of these arguments are completely lacking in foundation if a close study is made of contemporary documents. But they were advanced by France (and are now advanced by Chad) to overcome the formidable hurdle that the two Anglo-French agreements of 1899 and 1919 were *res inter alios acta* so far as other Powers were concerned, those other Powers including, prior to 1912, the Ottoman Empire and, subsequent to 1912, Italy, as the States exercising sovereignty in and over Libya.

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[41] *See*, *LC-M*, paras. 4.80-4.82, 4.85-4.89, 4.93-4.95, 4.106-4.109, 4.114-4.115, and 4.123.

[42] *See*, *LC-M*, paras. 4.119-4.122.

[43] *See*, *LC-M*, paras. 4.123-4.125.

[44] *See*, *LC-M*, paras. 4.126, *et seq.*, esp., paras. 4.142-4.149.

9.36 Even if the view were taken that Italy had at some stage accepted the 1899 southeast line, if only as a strict southeast line dividing spheres of influence, this cannot be interpreted as acceptance by Italy of the modification in the direction of that line effected by the Anglo-French Convention of 8 September 1919. Italy protested strongly to Britain and France in 1921 about the northward shift in the terminal point of the 1899 southeast line, and repeated that protest in 1924[45]. The Italian refusal to accept that part of the 1919 Anglo-French Convention, which related to the extension northwards to 19°30'N of the Darfour-Ouadaï boundary dividing the Sudan from French possessions, and to the direction of the southeast line described in the 1899 Declaration as "interpreted" in 1919, was persistently maintained until the conclusion of the 1935 Treaty which would, had the exchange of ratifications taken place, have fixed the terminal point of the agreed boundary east of Toummo at the intersection of 18°45'N latitude with 24°E longitude. This is evidenced, inter alia, by the position taken by Italy in the Anglo-Italian negotiations of 1934 relating to the Sarra triangle[46].

9.37 In the CC-M, an attempt is made to argue that, whatever the position may have been in consequence of the 1902 Franco-Italian Accord, Italy in any event renounced definitively her right to rely on the Ottoman claims by way of inheritance by relying exclusively on Article 13 of the Treaty of London and on her protests against the 1919 Anglo-French Convention in negotiating with France on Libya's southern boundary between 1920 and 1934[47]. But a careful study of the documentation relied on by Chad in this respect reveals no more than that Italy invoked Article 13 of the Treaty of London as a basis for negotiations with France over Libya's southern boundary[48]. This was a basis which France could not deny, since, in the Franco-Italian Accord of 12 September 1919, both parties specifically acknowledged that the boundary question resolved by that Accord - namely, the course of the boundary between Ghadamès and Toummo - did not exhaust all the boundary questions in issue between Libya and French possessions bordering on Libya and that "other points" were reserved for subsequent examination[49].

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[45] See, LM, paras. 5.188-5.191 and 5.217; see, also, LC-M, paras. 4.203-4.218.

[46] See, LM, paras. 5.290-5.299.

[47] See, CC-M, paras. 7.40-7.60

[48] See, para. 6.196, et seq., above, and Supplementary Annex, No. 5.

9.38 It was only natural that Italy would rely on Article 13 of the 1915 Treaty of London in subsequent negotiations, given that France had acknowledged that her obligations to Italy under that Article had not been exhausted by the conclusion of the Accord of 12 September 1919; but this in no sense implied that Italy had renounced or abandoned the rights which she claimed by way of inheritance from the Ottoman Empire. Indeed, in the Anglo-Italian negotiations in 1933-1934 on the Sarra triangle, Italy specifically invoked the Ottoman occupation of part of the Libya-Chad borderlands in the period immediately preceding 1912 as the ground for her entitlement to the area in dispute[50]. And in the 1928-1929 negotiations conducted between French Ambassador Beaumarchais and Mussolini, the latter specifically referred to the Ottoman rights inherited by Italy[51].

9.39 Libya has already demonstrated that no importance should be attached to the use of the word "cession" in certain French and Italian documents dating from the period 1935 to 1938[52]. In this context, it is worth recalling that, at the time, the word "cession" was not always utilised with strict accuracy. In the Sarra triangle negotiations, even British officials, at least in internal documents, referred inaccurately to the "cession" of the Sarra triangle when it is clear that all they had in mind was merely the renunciation by Britain and the Sudan of their potential claim to the territory comprising the Sarra triangle[53].

9.40 Thus, there is no evidence of Italian "acquiescence" in the French interpretation of the 1899-1919 southeast line during any part of the period between 1912 and 1945. Nor is there any evidence of Italian "acquiescence" in French title to any part of the Libya-Chad borderlands, save in the context of the boundary which Italy was reluctantly prepared to agree with

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[49] See, LM, paras. 5.168-5.172.

[50] See, passage cited in LM, para. 5.291.

[51] See, Supplementary Annex, No. 5.4.

[52] See, LC-M, paras. 6.30-6.35; see, also, paras. 6.222-6.223, above.

[53] See, the passage from British internal documents cited at LM, para. 5.295.

France under Article 2 of the 1935 Treaty. Italy firmly and consistently took the position that the 1899 southeast line did no more than divide spheres of influence between Britain and France and that it was intended to be a strict southeast line intersecting the 24°E longitude just to the north of 15°N latitude. Indeed, Italy consistently protested against any French military incursion beyond the 1899 strict southeast line (Map LR 30).

CHAPTER X. SUBSEQUENT CONDUCT OF INTERESTED PARTIES UNTIL 1951

10.01 In the immediate post-war period from 1945 to 1957, it is French conduct and, to a very much lesser extent, British conduct that is of most interest in the context of the present dispute. With the defeat of Italy during World War II, Italian conduct ceases to have any real importance. On the other hand, account has to be taken of the 1947 Treaty of Peace with Italy; and, even more significantly, account has to be taken of discussions within the United Nations preceding the independence of Libya and relating to Libya's frontiers with neighbouring States and territories. It is to these matters that attention is now directed.

10.02 What is shown below is that French conduct during the period between 1945 and 1951 was dominated by the desire to acquire and retain, for the benefit of French possessions bordering on Libya, substantial portions of Libyan territory. As far as Libya's southern boundary was concerned, France continued to rely on her thesis that, with the failure of the 1935 Treaty to enter into force, the boundary had reverted to the 1899-1919 line opposable to Italy (and any successor in title to Italy in respect of Libya) by virtue of the 1902 Franco-Italian Accord and other assorted instances of Italian acquiescence. But this did not inhibit France, in the Four Power discussions, immediately following the entry into force of the 1947 Italian Peace Treaty, from advancing claims to a sizable portion of Libyan territory, including territory to the north of the 1899-1919 line.

10.03 That France was nervous about the validity of her main thesis is, however, attested to by her conduct in the United Nations debates on Libya's boundaries. Confusion was undoubtedly created in the Four Power discussions and later in the United Nations debates by reliance on misleading maps, some of British and some of French Algerian provenance. Even more confusion was created by a French notation on one of those maps referring to a (non-existent) Franco-Italian protocol of 10 January 1924. But the French representative to the Ad Hoc Political Committee corrected these errors immediately before the vote on what was to become General Assembly Resolution 392(V); and the vote on that Resolution (conducted in full knowledge of the French thesis) demonstrated that the General Assembly was not convinced that Libya's southern boundary had already been delimited by international agreement.

SECTION 1. French Conduct in Fezzan and the Libya/Chad Borderlands

10.04 During World War II, Libya was a major theatre of military operations. From the beginning of 1943 onwards, British and other Allied forces, advancing from Egypt, succeeded in occupying the whole of Cyrenaica and Tripolitania; and French troops, advancing from the south, occupied the borderlands and Fezzan[1]. One detachment of French troops in fact occupied Koufra, which was however later handed over to British military administration.

10.05 Thus, by the end of World War II, the whole of Libya was under foreign military administration, and this remained the position until Libya achieved its independence at the end of 1951. In the immediate post-war period, French forces, and indeed French Governments generally, were determined to stay in Fezzan for reasons of national pride and for other, and perhaps more compelling, political and economic reasons[2].

SECTION 2. Senoussi Conduct During World War II

10.06 The Senoussi joined the British (and eventually Allied) cause during World War II. A meeting of Senoussi leaders from Tripolitania and Cyrenaica resolved in August 1940 to participate in the war alongside the British army in Egypt under the leadership of the Senoussi Emirate. Subsequently, a Libyan Arab Force came into being, as a result of an agreement between the Assistant Military Secretary, British Forces in Egypt and the Emir Idris, representing the Senoussi[3]. The British were conscious of the Senoussi contribution to the war effort, and on 8 January 1942, Mr. Eden (then Foreign Secretary) declared that this British Government were determined that, at the end of the war, the Senoussi in Cyrenaica would in no circumstances again fall under Italian domination[4].

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[1] See, LM, para. 5.357.

[2] See, LM, paras. 5.403 and 5.412.

[3] See, LM, para. 5.355.

[4] See, LM, para. 5.356.

SECTION 3. Treaty of Peace with Italy and Four Power Discussions on Libya

10.07 With the end of World War II, attention began to be directed towards the future disposition of the Italian colonies in Africa, including Libya. The Four Powers who had been the principal authors of the Allied victory in 1945 (Britain, France, the United States and the Soviet Union) obviously had the primary responsibility for settling the terms of the Treaty of Peace with Italy. Italy wanted Libya to be placed under the U.N. trusteeship system with Italy as Administering Power, but this was objected to by Britain in view of its wartime promise to the Senoussi. In the event, the issue was deferred in the final text of the 1947 Treaty of Peace, Article 23 of which merely provided that:

(a) Italy renounced all right and title to its territorial possessions in Africa, including Libya;

(b) Pending their final disposal, these possessions would continue under their present administration; and

(c) The final disposal of these possessions would be determined jointly by the Governments of the Four Powers within one year from the Treaty's entry into force in the manner laid down in a Joint Declaration issued by the Four Powers.

10.08 The Joint Declaration laid down, inter alia, that the final disposal of the territories concerned and the appropriate adjustment of their boundaries would be made by the Four Powers "in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments". The Joint Declaration also stipulated that if the Four Powers were unable to agree upon the disposal of any of the territories within the time-limit specified in Article 23, the matter would be referred to the U.N. General Assembly for a recommendation, the Four Powers agreeing to accept the recommendation and to take appropriate measures for giving effect to it[5].

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[5] For the full texts of Article 23 of the Treaty of Peace with Italy and of the Joint Declaration incorporated as Annex XI to the Treaty, see, L.M., para. 5.363.

10.09 There were differing reactions to these treaty provisions. Within Libya itself the Four Power Commission reported that there was an almost unanimous Libyan desire for complete independence, although the Commission itself concluded that Libya was neither economically self-supporting (this was before the discovery of oil on Libyan territory) nor ready for independence. As already indicated, Italy wanted Libya placed under U.N. trusteeship, with herself as Administering Power, but this was objected to by Britain. Egypt supported Libyan independence but proposed herself as Administering Power if the trusteeship solution were decided upon.

10.10 For the Four Powers, the matter was complicated by demands for an adjustment of Libya's boundaries (or asserted boundaries) advanced by Egypt and France. The Egyptian demand was for revision of her eastern boundary with Libya, so that the oasis of Djaraboub, the plateau of Sollum, Bardia and the Sarra triangle would either revert to, or be acknowledged as belonging to, Egypt. The French demand was for revision of the boundary between Libya and Algeria so as to place Ghadamès and Ghat firmly within Algerian territory; it was also for a drastic simplification of what France regarded Libya's southern boundary (pre-1935) to be, involving the transfer to France of all territory to the south of a straight line drawn along the Tropic of Cancer from approximately 11°N longitude to 20°N longitude, from whence it would descend due south to join the 1899-1919 southeast line (Map LR 26 referred to in paragraph 6.251)[6]. The French wished the Four Power Commission to examine these demands for "frontier adjustment". But this was never done.

10.11 Thus, France sought to take advantage of her privileged position as one of the Four Powers to have attributed to her, in respect of Algeria, French West Africa and French Equatorial Africa, sizable portions of Libyan territory, even before the final disposal of Italian possessions in Africa had been decided upon. Fortunately, others of the Four Powers resisted this French pressure, and it was eventually decided that any question of revision of Libya's external frontiers should be left over until a decision on the final disposal of Libya had been taken, the question of frontiers thereafter to be settled by a boundary commission to be set up by the United Nations[7].

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[6] See, also, LM, paras. 5.364 and 5.365.

[7] See, LM, para. 5.367.

10.12 As the Four Powers were unable to agree on the final disposal of Libya within the time-limit fixed in the Joint Declaration (Annex XI to the Treaty of Peace with Italy), the issue was referred to the U.N. General Assembly in 1949.

SECTION 4. United Nations Consideration of Libya's Boundaries

10.13 Both Libya and Chad have sought to analyse in considerable detail the debates within the various United Nations organs to whom was assigned the task of studying the Libyan question between 1949 and 1951[8].

10.14 Libya contends that the wording of General Assembly Resolution 392(V) of 15 December 1950, particularly when read in the light of the travaux préparatoires of that Resolution, confirms that, on the date of its adoption, no agreed boundary existed between Libya and French possessions east of Toummo[9]. The Resolution recommended, inter alia, "that the portion of [Libya's] boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments ...". But the adoption of this Resolution had been preceded by significant preparatory studies. General Assembly Resolution 289(IV) of 21 November 1949, had already recommended, despite doubts expressed by Britain and France, that Libya should be constituted as an independent and sovereign State and that this independence should become effective as soon as possible and in any case not later than 1 January 1952[10]. Section C of the same Resolution called upon the Interim Committee of the General Assembly "to study the procedure to be adopted to delimit the boundaries of the former colonies in so far as they are not already fixed by international agreement" and to report with conclusions to the next regular session of the General Assembly[11]. It should be noted that this was to be a general study embracing all the former Italian colonies and not simply Libya.

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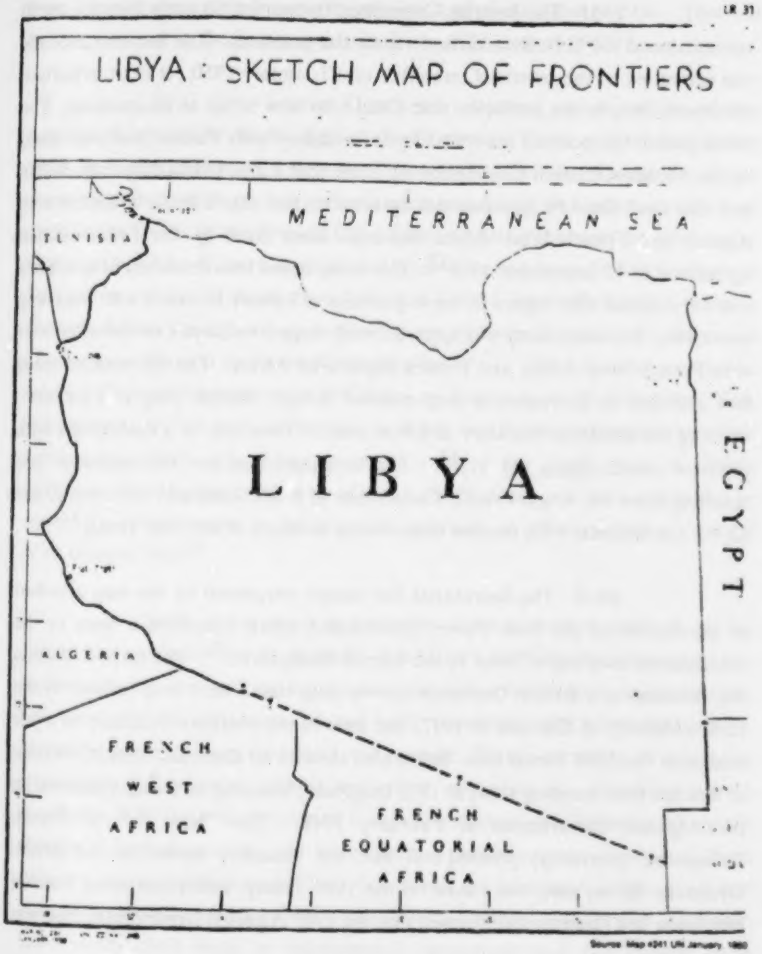
[8] See, LM, paras. 5.369-5.397; CM, pp. 221-235, paras. 61-104; LC-M, paras. 8.34-8.43; and CC-M, paras. 11.133-11.138.

[9] The Resolution is discussed above, starting at para. 4.12.

[10] See, LM, para. 5.373.

[11] See, LM, para. 5.376.

LR 31


LIBYA : SKETCH MAP OF FRONTIERS
MEDITERRANEAN SEA
TUNISIA
LIBYA
EGYPT
ALGERIA
FRENCH WEST AFRICA
FRENCH EQUATORIAL AFRICA

Source: Map #241 UN January, 1950

10.15 The Interim Committee thereupon (in early January 1950) commissioned the U.N. Secretariat to study the problems. The Secretariat Study was submitted to the Interim Committee on 27 January 1950. It is an important document, despite the confusion that Chad tries now to lay at its doorstep. The Study (correctly) pointed out that Libya's boundary with Tunisia had been fixed by the Franco-Ottoman Convention of 1910; that Libya's boundary with Sudan had also been fixed by international agreement; and that Libya's boundary with Algeria and French West Africa had also been fixed by the Franco-Italian agreement of 12 September 1919[12]. The Study noted that no claims or questions had been raised with regard to these portions of Libya's frontiers with adjoining territories. But uncertainty was apparent with respect to Libya's southern frontier with French West Africa and French Equatorial Africa. The Secretariat Study had included, as an Annex, a map entitled "Libya : Sketch Map of Frontiers", showing the southern boundary of Libya, east of Toummo, as a dashed line with question marks (Map LR 31)[13]. The boundary was not the southeast line resulting from the Anglo-French Convention of 8 September 1919; it was closer to, but not identical with, the line described in Article 2 of the 1935 Treaty[14].

10.16 The Secretariat was clearly perplexed by the map attached to the Report of the Four Power Commission which contained a Note by the Commission itself and a "Note by the French Delegation[15]". The map itself was a reproduction of a British Ordnance Survey map based on a map printed by the Italian Ministry of Colonies in 1937, and showed the southern boundary as a line similar to the 1935 Treaty line. But it also showed an alternative French version of this line (but stopping short at 18°E longitude) based upon a map published by the Algerian Government in February 1948. The "Note by the French Delegation" (correctly) pointed out that the boundary shown on the British Ordnance Survey map was based on the 1935 Treaty, which had never entered into force, but (incorrectly) claimed that the 1948 Algerian Government map was based on a non-existent Franco-Italian Protocol of 10 January 1924. This was duly pointed out by the Secretariat in its Study of 27 January 1950[16].

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[12] See, LM, para. 5.378.

[13] This map appeared in the LM as Map No. 87.

[14] See, LM, para. 5.377 and Map No. 87.

[15] See, LM, para. 5.381, and Map No. 88.

10.17 The Interim Committee deferred consideration of the question of boundaries in the light of the Secretariat Study until 15 September 1950. It is appropriate to interpolate here that this left the French delegation ample time to correct any misunderstanding created by the incorrect reference made in the "Note by the French Delegation" added to the map annexed to the Report of the Four Power Commission; but nothing was done. When the Interim Committee met on 15 September 1950, the United States Delegation tabled a draft resolution, the relevant part of which was virtually identical with the text of what became General Assembly Resolution 392(V)[17]. This was forwarded to the Ad Hoc Political Committee which began to debate it on 13 December 1950. Before a vote on the draft resolution was taken, the French representative made a statement which, inter alia, presented a claim for rectification of Libya's boundary with Algeria in the area of Ghat and Serdeles and then proceeded to correct the error created by the mistaken reference to a Franco-Italian Protocol of 10 January 1924[18].

10.18 If the object and purpose of the corrective statement by the French representative was to maintain that Libya's southern boundary had been delimited by the international agreements and acts referred to in that statement, it is clear that his statement did not carry conviction with other delegations. Moreover, had that been the object and purpose, France should in all logic have voted against Resolution 392(V) instead of voting for it. The reference in Resolution 392(V) to "the portion of [Libya's] boundary with French territory not already delimited" could only have been a reference to Libya's southern boundary, since the Secretariat Study (which was not contested on this point) had already concluded that Libya's boundaries with Tunisia, Algeria and the Sudan had already been fixed by international agreement, and the French claim advanced in the debate was a claim for rectification of Libya's boundary with Algeria. Furthermore, the Egyptian claim was likewise a claim for rectification of the Libyan-Egyptian boundary, and this was to be the subject of a separate General Assembly resolution of 28 January 1952 recognising Egypt's intent to enter into negotiations with Libya[19].

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[16] The studiedly neutral analysis by the Secretariat of the position on this aspect of the matter is reproduced at LM, para. 5.379; see, also, LM, para. 5.382.

[17] See, LM, paras. 5.386 and 5.387.

[18] Relevant extracts from the statement by the French representative are reproduced at LM, paras. 5.388 and 5.390-5.392. See, also, Supplementary Annex, No. 6.1.

10.19 The CC-M makes a comment about Article 3 of the 1955 Treaty that Libya finds revealing, even if it is not simple to understand:

> "Il s'agit en quelque sorte de la réaffirmation sous une autre forme des termes de la résolution 392(V)[20]."

But Resolution 392(V) had called for substantive negotiations on those of Libya's boundaries with French territory which had not clearly been delimited by international agreement - this referring specifically, as Libya has demonstrated, to Libya's southern boundary. Chad does not, and cannot, on the facts, assert that substantive negotiations took place in 1955 on Libya's southern boundary. Indeed, Chad admits that the substantive frontier negotiations between Libya and Chad in 1955 related to the segment of boundary separating Libya from Algeria and Niger[21]. This was the segment of boundary that France wished the most to have rectified in her favour.

10.20 Chad then goes on to argue that little importance should be attached to the consideration that the 1955 Treaty makes no mention of Resolution 392(V) and that one should not in any event attach to the travaux of the U.N. any fundamental importance in the interpretation of the 1955 Treaty[22]. This only serves to confirm the weakness of the Chad position as regards the significance of Resolution 392(V) and its relationship to the 1955 Treaty.

10.21 As Libya has already explained, neither Libya nor France wished to enter into substantive negotiations in 1955 on the subject of what was or should be Libya's southern boundary[23]. Libya did not wish to do so because her basic position was that frontier delimitation questions should be dealt with outside the framework of the 1955 Treaty and because she was insufficiently informed as to the details and did not have available in its delegation any experts on frontier problems. Libya's prime objective was to secure the evacuation of French forces from Fezzan[24].

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[19] See, LM, para. 5.394 and fn. 458.

[20] CC-M, para.11.137.

[21] See, CC-M, para. 11.123.

[22] See, CC-M, para. 11.138.

[23] See, para. 5.12, et seq., above.

10.22 France's position was different. She wished to receive compensation for agreeing to withdraw French forces from Fezzan, particularly on questions of security and frontiers[25]. But, as regards frontiers, and particularly the "frontier" between Libya and French Equatorial Africa, the Governor General of the A.E.F. strongly advised against asking Libya to recognise what France regarded as the existing boundary between Libya and the A.E.F., but rather to set out the principles that should govern such a delimitation in the future, taking as the sole basis for such a delimitation the treaties in force on the date of Libya's independence[26]. The views of the Governor General were concurred in by the Ministre de la France d'Outre Mer and were reflected in the instructions given to the French negotiating team when negotiations resumed in July 1955[27]. France therefore confined itself, in the Franco-Libyan negotiations, to seeking rectification of the Libyan-Algerian portion of the boundary between Ghat and Toummo, but was otherwise content not specifically to raise the question of Libya's other boundaries with French territory, including Libya's southern boundary[28].

10.23 Such travaux préparatoires to the 1955 Treaty as are available do not disclose why no reference was made in the preamble to that Treaty to General Assembly Resolution 392(V). One can surmise that the French negotiators might have been reluctant to include a preambular reference to that Resolution since it was predicated on the assumption that there was a portion of Libya's boundary with French territory which had not been delimited by international agreement. It is however equally plausible that it was in the interest of both parties not to make any reference in the 1955 Treaty to General Assembly Resolution 392(V), since both sides were aware that the 1955 Treaty provisions on frontiers did not give effect to the recommendation in that Resolution, but at most amounted to what Chad has revealingly referred to as "la réaffirmation sous une autre forme des termes de la résolution 392(V)[29]".

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[24] See, LM, paras. 5.423, 5.445-5.451, and 5.459-5.462.

[25] See, LM, paras. 5.429-5.439.

[26] See, LM, paras. 5.437-5.439.

[27] See, Supplementary Annex, No. 6.6.

[28] The Ghadamès-Ghat segment of the Libyan boundary was subsequently dealt with in the 1956 Agreement. The southern boundary was intended to be settled at a subsequent time. See, para. 5.12, et seq., above.

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[29] See, para. 5.38, above.

CHAPTER XI CONDUCT OF LIBYA AND CHAD POST-1951

SECTION 1. Introduction

11.01 In its Counter-Memorial, Chad reproached Libya for "incohérent" conduct in the period between Libya's independence and the presentation to the Court of its Memorial. According to the CC-M, Libya had many opportunities to set forth its present territorial claims but failed to do so. As a result of this conduct, Chad asserts that Libya recognised a boundary between Libya and Chad corresponding to the boundary line claimed by Chad in this case.

11.02 It is appropriate, in beginning this analysis of the conduct of the Parties after 1951, to recall that General Assembly Resolution 392(V) of 15 December 1950 reflected the view that no boundary existed between Libya and France's colonial boundaries east of Toummo[1]. France had expressly recognised this to be the case in 1935[2]. Accordingly, in this Resolution, the General Assembly invited Libya and France to negotiate in order to delimit this boundary. As Libya has demonstrated, such negotiations concerning Libya's southern boundary east of Toummo never took place and, thus, the 1955 Treaty did not carry out such a delimitation. No such boundary east of Toummo resulted from the 1956 Agreement either, since it was concerned solely with the rectification of Libya's Algerian boundary between Ghadamès and Ghat[3].

11.03 Thereafter, the international climate was hardly propitious for such negotiations between Libya and France, as has been explained above and in prior pleadings[4]. To mention again a few reasons why this was so, France was caught up in the war with the F.L.N. in Algeria, thus earning it the hostility of the Arab world. As a result, France had more important worries than the delimitation of Libya's southern boundary. As for Libya, it supported the Algerian people in their struggle for independence. Any negotiation of this character presupposed the existence of a minimum climate of confidence and goodwill between the participating States. This confidence was conspicuously absent at the time[5]. Outside the meaning to be attributed to the 1955 Treaty and the 1956 Agreement, no conclusions can be drawn from Libya's conduct between its independence in 1951 and 1960, when Chad achieved independence. In the discussion that follows, the following conclusions are reached concerning the post-1951 conduct of Libya and of Chad:

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[1] See, para. 4.17, above, and the discussion of the Resolution just above in the previous Chapter.

[2] See, LM, para. 5.325; LC-M, para. 6.26; and para. 6.211, above.

[3] See, para. 5.45, above.

[4] See, para. 4.21, et seq., above, and references there to the LM and LC-M.

- In their mutual relations, the two Parties failed to raise the problem of their boundary during the period 1960-1971;
- In the period after 1971, Chad recognised Libya's sovereignty over the so-called "Aouzou Strip", but subsequently reversed itself and contested Libya's sovereignty there;
- The debates before the U.N. were essentially political;
- It was only in 1987 that the O.A.U. started to become really involved in the matter of the Libya-Chad boundary;
- In its statements before both international bodies on the question of the territorial dispute between Libya and Chad, Libya made reference to its inheritance of the rights and titles of the Ottoman Empire.

11.04 In the following discussion, the conduct of the Parties will be examined in the context of their mutual relations. Then the conduct of each Party before the O.A.U. and the U.N. will be examined.

SECTION 2. Conduct of Libya and Chad in the Context of Their Mutual Relations

11.05 An understanding of the relations between two States can only be acquired if examined in historical context. Both States had just emerged from their colonial past: Libya regaining independence under the special procedures of the 1947 Italian Peace Treaty and under the aegis of the U.N.; Chad as a result of decolonization. But as new States they had shaky foundations.

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[5] LC-M, para. 3.113.

They knew practically nothing about the prior relations among Great Britain, France and Italy - and hence about any possible boundary problem between them. And Chad, almost from the moment of independence, suffered from intense instability, rendering any meaningful negotiations over its territorial boundaries virtually impossible.

11.06 To pretend today that Libya had a duty starting in 1960 to formally set out its territorial claims, based on a rigorous juridical analysis and a thorough knowledge of the background facts and documents, is to try to rewrite history and especially to ignore the situation that then prevailed in the region. But this is Chad's position before the Court in this case; and it occurs to Libya that it might have behooved Chad to be more temperate in its attack on Libya for supposed "incohérence" when its own conduct was, without any doubt, far worse.

11.07 The situation before and at the time of the conclusion of the 1966 Treaty between Libya and Chad may accurately be described in this way. From independence and for many years following, Libya was a poor country. It was dependent on international support. It certainly had no corps of competent jurists (certainly not to deal with such matters as international boundaries); and it had no knowledge of the documents to be found in the British, French and Italian archives relating to the questions now before the Court in the present dispute. A candid assessment of Libya's knowledge, preparation and competence in such matters as boundary negotiations - and in respect to the 1956 negotiations concerning the Algerian boundary, as to which the Libyans were far more informed than its southern boundary - is contained in a note of 23 November 1956 of M. Joxe, Secretary General of the Ministry of Foreign Affairs:

> "... nos interlocuteurs n'avaient qu'une connaissance insuffisante des régions en cause; ils étaient incapables de formuler clairement leurs revendications et encore moins de les arrêter sur une carte; ils ne possédaient ni dossiers ni documents, se bornant à se faire l'écho de vagues témoignages et de prétentions exagérées dont ils ne parviennent pas à faire une synthèse cohérente[6]."

A few days later, on 29 November 1956, the French Minister gave a similar account to the French Parliament of the difficulties that Libya faced at the time in readying itself for boundary negotiations, again as to the boundary with Algeria:

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[6] Supplementary Annex, No. 6.7.

> "C'est en juin que nos experts devaient se rendre à Tripoli. Que s'est-il passé? Il s'est passé ... que la Libye n'avait pas d'expert, qu'elle a dû en chercher en Suisse, et qu'au dernier moment, cet expert s'est trouvé indisponible[7]."

This perfectly illustrates the predicament facing these new States that had just achieved independence - and yet today Chad would attempt to hold Libya to a standard of conduct that not many experienced States could live up to.

11.08 It should be noted that Libya as well as Chad experienced its share of instability during this period. Between 1963 and 1969, seven changes of the Libyan Government and 15 ministerial replacements occurred. The 1967 agression against Arab States in the Middle East must also not be overlooked and the troubles resulting within the Arab world. In that year, there were demonstrations and riots in Tripoli, including attacks against British and American installations.

11.09 Thus, Chad was not alone in experiencing difficulties. Like Libya, it had been poorly prepared for independence by its colonial parent. This was especially the case with respect to military matters, as reflected in the 1960 Accord between France and Chad, which accorded in its Article 4 -

> "... aux forces armées françaises la libre disposition des bases qui leur sont nécessaires[8]."

And the companion Accord concerning military and technical assistance provided, in its Article 1, that France would assist Chad in establishing its police force and national army. Thus, whatever military presence there was in the borderlands was purely French.

11.10 Chad's poverty was brought out in this 1972 description:

> "En termes d'économie moderne, le Tchad est l'un des pays les plus pauvres du monde[9]."

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[7] Journal Officiel de la République Française (J.O.R.F.), 29 November 1956, p. 2364.

[8] J.O.R.F., 24 Nov. 1960, p. 10460.

[9] Casterou, C.: "La rebellion au Tchad", Revue française d'études politiques africaines, Janvier 1972, p. 47.

But even graver was the rebellion that developed as early as 1963 and led, in 1966, to the creation of the Frolinat[10]. As a result, there was a progressive disappearance of any semblance of governmental administration. It was owing to French military intervention in 1968 and 1969 that Chad avoided falling totally into chaos.

11.11 It is, thus, no surprise that neither of the parties to the 1966 Treaty of Amity between Libya and Chad raised the matter of territorial boundaries. This is illustrated by the fact that the 1966 Treaty, whose provisions replaced those of the 1955 Convention concerning the "régime frontalier"[11], never refers back (unlike the 1955 Convention) to Article 3 of the 1955 Treaty. The quite different function of the 1955 Convention (and its successor, the 1966 Treaty, in respect to the "régime frontalier") has already been discussed above[12].

11.12 It is mystifying how the CC-M can see in the subsequent agreements between Libya and Chad, in 1972, 1974 and 1980, any further proof of Libyan acquiescence in the boundary line claimed by Chad. For these agreements lead to quite the opposite conclusion.

11.13 In 1971, the then Government of Chad, alleging that Libya was interfering in its internal affairs, broke off diplomatic relations. But relations resumed in 1972, culminating in the 1972 Treaty, signed in December of that year, which concerned cooperation and mutual assistance[13]. There was no mention at all of boundaries in this Treaty; it dealt only with cooperation in such fields as economy and finance, commerce, technical assistance, and cultural affairs[14]. In the Treaty, the parties undertook to resolve any future disputes by means of negotiation, observing the provisions of the Charters of the U.N. and the O.A.U..

11.14 Why were boundary problems not raised at that time? The answer is clear: it was hardly the right moment to do so given the stormy period both countries had been through. And what was to be discussed had not been defined, and this was a very poor time to do so.

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[10] Front de libération nationale tchadien.

[11] See, para. 5.50, et seq., above.

[12] Ibid.

[13] Libya had already started to establish its civilian administration in the north of the borderlands by then.

[14] See, LM, para. 5.554, et seq. and International Accords and Agreements Annex, No. 34, where the Treaty's text is set out.

11.15 The 1972 Treaty was signed on 23 December 1972 less than a month after the letter President Tombalbaye addressed to Colonel Kadhafi (dated 28 November), containing this declaration:

> "En ma qualité de Président légal du Tchad, je tiens à vous affirmer que la bande d'Aouzou a été et sera, sans aucun doute, partie intégrante du Territoire Libyen."

This letter, which Chad has chosen to introduce into evidence, is important in several respects. First, it confirms what Libya also believed in 1972: that the 1955 Treaty had not delimited Libya's boundary with Chad. Otherwise, the letter would not have brought up the question of sovereignty over the so-called "bande d'Aouzou".

11.16 Second, the letter shows that Chad recognised Libyan sovereignty over this territory. There was no question in the letter of ceding territory; President Tombalbaye affirmed that "la bande d'Aouzou a été partie intégrante du territoire libyen[15]". Thus, Chad's President expressed the view - in a most official manner - that this region had always belonged to Libya. This official view of Chad at the time is a long distance away from Chad's position today in front of the Court. In addition, by this letter Chad foreswore any claim in the future concerning this region of the borderlands. For the letter said that this region not only had always been Libyan territory but also that it would always remain so ("le sera")[16].

11.17 The legal effect of such an official statement has been addressed by the Court[17]. In respect to territorial questions, the Permanent Court had this to say, in the Eastern Greenland case:

> "The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling

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[15] Emphasis added.

[16] The text of the letter is set out in CM, Annex 343. See, also, LC-M, para. 5.119, et seq.

[17] See, LC-M, para. 5.123, fn. 191.

> within his province, is binding upon the country to which the Minister belongs[18]."

That case concerned a statement by a Minister of Foreign Affairs. *A fortiori*, a statement by the head of a State carries even more legal weight. It is also apparent that such a letter must have been written in response to a question raised by Libya in order to determine whether in Chad's view this region was under Libyan sovereignty. It was a very pertinent question at the time since Libya, assuming that the territory was Libyan, had started to install its civilian administration there.

11.18 However the Tombalbaye letter is interpreted - even if it is not read as a renunciation of territory by Chad - at the very least it establishes that the question of delimiting the boundary between Libya and Chad remained to be resolved and that it would necessarily be the subject of negotiations in the future. In fact, evidence from the French diplomatic files reveals that shortly after Chad's independence this was the view of the Governments of both France and Chad[19].

11.19 As Libya explained in the *LC-M*, Libya did not refer to or produce the copy it has of the Tombalbaye letter in the present case because it has not been able to find the original. Apparently, Chad has not found her copy, but the *CM* discusses the letter and produced the same copy that Libya has of it. The rumours as to such a letter were sufficiently wide-spread at the time[20] as to suggest that the copy produced by Chad is a faithful copy of the original. Chad's subsequent conduct also confirms the fact that such a letter was sent. In fact, it would not matter if such a letter had never been sent, for Chad's attitude and conduct in the ensuing years reveals that Chad acquiesced in the Libyan presence in this northern part of the borderlands. Otherwise, Chad's conduct in the face of this fact made no sense.

11.20 Starting at the end of 1972, Libya started to expand the reach of its governmental administration into the northern borderlands - an indication that the Tombalbaye letter did in fact exist, for having received this recognition of Libyan sovereignty in the region, it was an appropriate move to make. Moreover, Libya's action incited not the slightest Chadian protest.

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[18] *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, at p. 71.

[19] *See*, *Supplementary Annex*, No. 6.9 (6, 8 and 10).

[20] *See*, Lanne, B.: *Tchad: La guerre des frontières*, Paris, Karthala, 1982, pp. 228-229.

11.21 Nor was there any reaction from France, which was minutely following the situation in Chad and which had intervened militarily and was to intervene again several times in Chad to safeguard the various successive Chadian governments. It will be recalled that the French Ambassador in Chad at the time noted the absence of any Chadian reaction to Libya's actions in his book published in 1974, saying:

> "Aouzou est maintenant dotée d'une garnison libyenne, sans avoir pour autant entraîné réaction du gouvernement de Tombalbaye[21]."

Over ten years later, the French Minister of Defence, Charles Hernu, had this to say on the subject in a statement he made on 27 March 1985:

> "La bande d'Aouzou est hors du Tchad. Cela, tout le monde en est d'accord. ... C'est une affaire qui remonte à 1934[22]."

Such an affirmation at the very least is evidence that the French Government had never been convinced that the 1955 Treaty established a boundary between Libya and Chad. M. Hernu's reference to the year 1934, just before the signing of the 1935 Treaty, once again confirms the French Government's statement in the *Exposé des motifs* accompanying the law to authorize ratification of the 1935 Treaty that prior thereto no such boundary existed.

11.22 It is not the mere absence of a Chadian protest that is significant. After 1973, Chad and Libya enjoyed excellent relations, which had been restored in December 1972, just when Libya's move into the borderlands was under way. On 7 March 1974, on the occasion of a visit of Colonel Kadhafi to N'Djamena, according to Chad's official communiqué:

> "Le Président N'Garta Tombalbaye a tenu à remercier son collègue libyen et le peuple de Libye pour l'aide efficace qu'ils apportent pour le développement du Tchad[23]."

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[21] *See*, *LM*, para. 5.560, and the citation there to this book; *See*, also, *LC-M*, para. 5.125.

[22] *LC-M*, para. 5.145.

[23] *Agence Tchad Presse*, Nouvelles Nationales, 8 mars 1974.

No head of State would so address another whose troops were in occupation of its territory.

11.23 Chad's acquiescence is confirmed by the 1974 Treaty between Libya and Chad. After stressing the ties that existed between the two States, Article 2 thereof provided as follows:

> "The frontier between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations[24]."

11.24 The 1974 Treaty in fact substituted a new régime frontalier for that established in the 1955 Convention and replaced in the 1966 Treaty. If, as Chad mentions, the reference in these 1955 and 1966 instruments to a boundary means that a boundary had been determined - a proposition Libya rejects - then it is clear that such a boundary included within Libyan territory the part of the borderlands Chad called the "bande d'Aouzou".

11.25 Two conclusions may be drawn from the 1974 Treaty. First, Libya's presence in a part of the borderlands went uncontested by Chad. Otherwise, Chad would not have concluded this Treaty in 1974 that stresses repeatedly the fraternal character of the relations between the two States. Second, that aside from the so-called "bande d'Aouzou" there existed an unresolved question of delimiting the Libya-Chad boundary. This is the only explanation to be given to the statement in Article 2, quoted above, that the colonial concept of the frontiers between the two countries should provide no obstacle to their close relations. This Article supports Libya's view that no conventional boundary existed then (or exists now): for in the 1974 Treaty the two States took note of the fact that the boundary between them had not been delimited and that such differences between them should be resolved by future negotiations.

11.26 The CC-M gives the 1974 Treaty a different reading. It directs attention to the use of the words "frontiers" in Article 2 of the Treaty, overlooking Article 3, which refers to the "border areas", and from this fragile base concludes that:

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[24] LM, International Accords and Agreements Annex, No. 35.

> "Cet accord prouve l'existence d'une frontière et la reconnaissance du fait qu'il est préférable d'aborder le problème des frontières héritées de l'époque coloniale, en admettant cette réalité et en prévoyant la coopération et la libre circulation des peuples concernés[25]."

But that was not what Article 2 of the 1974 Treaty could have meant: it referred to the "conception" of frontiers (or boundaries) not to the fact that there was a boundary between the two States. What it meant was that colonial conceptions should not stand in the way of resolving their territorial problems amicably through negotiations. If, indeed, the parties to the Treaty believed there was an existing boundary, Chad's conduct establishes that any such boundary would have included the northern part of the borderlands being administered at the time by Libya without any objection from Chad.

11.27 As to the several meetings after 1974 between the Parties when the boundary issue came up, the very fact that there were these discussions meant that there was a boundary to be established between them. The LC-M points out that the unilateral record of the meeting of 23-26 June 1977 provided by Chad must be read with caution[26]. But in any event, an analysis of this document reveals several things.

11.28 First, it was evident that in 1977 the Parties were not well informed at all as to the legal aspects of the territorial dispute before them. Libya invoked the 1935 Treaty as a justification for its presence in the borderlands; Chad argued that the 1935 Treaty did not apply because it had been denounced by Italy and France. A superficial knowledge of the file would have revealed that the boundary agreed in the 1935 Treaty did not take effect because the instruments of ratification were not exchanged, not because it entered into force and then was denounced - legally, an important distinction.

11.29 Second, the unilateral record of this meeting indicated that when the question of sovereignty over the so-called "bande d'Aouzou" came up, the reaction from Chad was as follows:

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[25] CC-M, para. 2.76.

[26] See, LC-M, para. 5.134, et seq.

> "La Partie Tchadienne, de son côté, pense que tant qu'il y a une présence effective Libyenne à AOUZOU, toute coopération bilaterale est impossible[27]."

It would be thought that in the light of such a rigid protest on the part of Chad, good relations between the two States would have come to a halt then and there. But nothing of the sort happened. On 15 June 1980, the two States concluded a Treaty of Alliance and Friendship. It contained provisions concerning mutual defence that included the right of Chad to call on Libya for assistance if its territorial integrity was threatened. It also contained a provision under which Chad undertook not to allow the establishment of any foreign military base.

11.30 The CC-M accurately points out that the 1980 Treaty made no mention of any territorial claim; but the real point is that, with Libya present in part of the borderlands, had Chad considered that it had sovereignty over that area, it could hardly have signed the Treaty leaving such an issue unmentioned. No State would sign such a treaty with another State which it considered to be occupying part of its territory. Chad undertook in the Treaty not to permit the establishment of foreign military bases on Chadian territory. Then why did the Treaty not include a provision requiring Libya to withdraw from the borderlands? It will be recalled that on 22 January 1980, the Chadian Government called on France to withdraw its forces; and on 27 April, the French Government reported that the evacuation had been accomplished[28]. Why was there not a similar request made by Chad to Libya?

11.31 The 1980 Treaty clearly demonstrates that Chad did not have any thought at the time that Libya's presence in the borderlands violated its sovereign territorial rights. The 1981 Treaty establishes the same point. There was not the slightest mention in it of a boundary problem. The Treaty never took effect, and was contested by other States in the region; in any event it only contemplated steps to be taken in the future.

11.32 Thus, in the period 1972-1983 - except for a short period in 1976-1977, when the Parties held three non-productive meetings and Chad complained to the O.A.U. and then to the U.N. (and its complaint was immediately withdrawn) - Chad's attitude was consistent: it recognised Libyan sovereignty over what it termed the "bande d'Aouzou". Starting in 1983, however, Chad's conduct changed, particularly in the arena of international organisations. It is to the behaviour of the two States before the O.A.U. and the U.N. that this discussion now turns.

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[27] CM, Annex 284.

[28] See, LM, para. 5.566.

SECTION 3. The Positions Taken by Libya and Chad Before the O.A.U.

11.33 As discussed above, in 1972 Chad recognised Libya's sovereignty over part of the borderlands, implicitly confirmed by the 1974 Treaty. However, in 1977, Chad abruptly changed its course, filing a complaint before the O.A.U. regarding Libya's presence in what it claimed to be the territory of Chad. At the same time, in 1977, futile discussions were taking place between Libya and Chad.

11.34 The result of Chad's complaint was the creation at the Conference of Heads of State of an ad hoc Committee. The latter recommended -

> "... la constitution d'un sous-comité d'experts chargé d'étudier le problème frontalier posé dans tous ses aspects[29]."

Thus, the Subcommittee had a broad mandate in respect to the Libya-Chad territorial dispute.

11.35 The work of the Subcommittee, however, made little progress in the following years due to the resumption of friendly relations between Libya and Chad, exemplified by the 1980 Treaty, entered into without a word being mentioned about Libya's presence in the northern part of the borderlands.

11.36 Both Chad's Memorial and Counter-Memorial give the impression that there was intense activity at the O.A.U. concerning the Libya-Chad territorial dispute. In fact, there was none. The O.A.U. during the 1980s pursued two important objectives: (i) evacuation of foreign forces from Chad's territory; and especially (ii) the reconciliation of the rival factions within Chad claiming the right to govern Chad. None of the activity had anything to do with the question of where the boundary between Libya and Chad lay.

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[29] CM, Annex 280.

11.37 It was not until 1987 - 10 years after Chad filed its initial complaint - that the O.A.U. embarked on a study of the problem. In this regard, the following points should be remembered. First, the O.A.U.'s Ad Hoc Committee gave these reasons for its previous inactivity:

> "... un immobilisme certain dans le fonctionnement du Comité dix ans après son institution ... le drame intérieur tchadien qui avait pris le pas sur le différend frontalier Libye-Tchad et le refus de coopération de la Libye ...[30]."

Second, the Subcommittee of experts in its First Report (19 May 1987) recalled "le caractère non exhaustif de la documentation[31]".

11.38 Although in the conclusions set out below these points will be mentioned again, it must be borne in mind that special factors existed at the time:

- The internal strife in Chad made impossible any attempt to resolve the territorial dispute between Libya and Chad;

- Libya did not cooperate in the work of the O.A.U. - but this was due not only to Chad's internal convulsions but also to Libya's view that the O.A.U. was not the proper forum for settling the dispute;

- The file was incomplete.

These factors bear witness to the legal complexity of the problem, as Libya had always maintained. It also reveals the fact that Chad had not totally cooperated, either, in furnishing documentation. Chad can hardly be blamed for this given the complexity of the problem and what Chad did not know about the French case that it was disposed blindly to follow.

11.39 Nevertheless, in 1988, though it had deliberately refrained from participating in the work of the Subcommittee up to then, Libya informed the Ad Hoc Committee generally as to its legal position concerning its boundary with Chad. The position presented was nowhere near as developed as that now presented to the Court, for the O.A.U. was not the appropriate forum for such a detailed presentation. In the event, the general line of Libya's presentation was as follows:

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[30] CC-M, Annex 135.

[31] CC-M, Annex 136.

> "Ce sont ces droits historiques que revendique aujourd'hui la Libye en tant qu'Etat successeur à la fois à l'Empire ottoman par l'Italie interposée et à l'Italie elle-même... ."

- As to the 1898, 1899 and 1919 agreements, they:

> "... ne procèdent pas à une délimitation de frontières mais visent simplement à fixer, en principe, les limites des zones d'influence française... ."

- Finally:

> "Pour la Libye, le Traité de 1955 n'avait pas pour fonction de délimiter la frontière entre elle et le Tchad, alors territoire français. Il ne comporte ni disposition ni critère de délimitation précise et les documents cités en annexe sont dépourvus de pertinence faute de valeur juridique . . .[32]."

11.40 The O.A.U. Ad Hoc Committee took no position concerning the legal validity of these arguments: it was not its function to do so. In spite of the brevity with which Libya's arguments were expressed, the Court will find quite easily the broad outlines of the case Libya now presents to the Court.

11.41 In the light of this presentation by Libya, Chad makes a rather surprising argument:

> "Bien que tout l'éventail des arguments libyens ait été mentionné, il n'était suggéré nulle part que la Libye était habilitée à revendiquer plus que la bande d'Aouzou."

While it is true that, formally speaking, the O.A.U. Committee was concerned with the "boundary dispute" between Libya and Chad - for that was the title given to the Committee's reports - Chad should have considered more carefully the substance of the thesis Libya set out at the O.A.U. If Chad had done so, it would have realised that, when the appropriate time came before the appropriate forum, Libya would claim as successor State to the rights and titles of the Ottoman Empire. It was evident on its face that such rights and titles certainly were not exclusively limited to the region of Aouzou - a region that had no special geographical or political significance (and was certainly not described in Ottoman times as the so-called "Aouzou Strip", which gained currency only in the 1970s). The point to be emphasised here is that when Libya claimed this inheritance from the past it manifestly was because it considered that no boundary delimitation resulted from the Anglo-French Accords in 1899 and 1919 or from the 1955 Treaty.

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[32] Comité ad hoc de l'OUA, synthèse des rapports I et II, Libreville, 13-14 avril 1988; CM, Annex 293.

11.42 Chad cannot pretend today not to have realised that, in 1988, after a very modest effort to assemble and to consider the file, Libya evaluated the dispute as involving a territorial area far larger than the so-called "Aouzou Strip". If Chad claims to be stunned today over the scope of the territorial dispute Libya and Chad have brought to the Court - and attempts to limit its scope -, it can only be for purely tactical reasons, for Chad's feigned surprise is totally unconvincing.

SECTION 4. Behaviour of Libya and Chad Before the U.N.

11.43 The CC-M repeats the argument, so fully set out in the CM, that Libya had an obligation to raise the Libya-Chad territorial dispute at the time of Chad's admission to the U.N.[33]. In its response to this contention, Libya has pointed out that the admission of a new State was a time for rejoicing and not the moment to air grievances[34]. The fact that other States may have acted differently on such occasions does not lead to the conclusion that there is a legal obligation in such circumstances to challenge the boundaries of the new State if they do not correspond with the realities, legally speaking. No better example of this is the case of Burkina Faso and Mali, where no boundary claims were interjected at the time of their admission as new States, although within a matter of years, their boundary dispute was brought before the Court. And there is the further point - brought out on several occasions in the 1950s and 1960s: Libya just did not know the details of the file concerning its boundary with Chad. It intended to deal with the problem at a time when future negotiations became praticable. There was no articulated Libyan claim as to the boundary with Chad in 1960.

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[33] See, CC-M, para. 9.115; CM, p. 321, para. 117.

[34] See, LC-M, para. 8.53.

11.44 Chad attempts to build up the significance of its intervention at the General Assembly on 6 October 1971. But what was really involved? The only issue concerned the alleged interference by Libya in the internal affairs of Chad - and Libya's supposed expansionist aims. There was no question then in 1971 of Libya's presence in the borderlands; Libya was not to start to install the machinery of government there until a year later.

11.45 Nevertheless, Chad tries to build two arguments around its 1971 U.N. intervention. It should be emphasised that these arguments have been devised by Chad now in this case; they were never made before the U.N. or elsewhere. First, it suggests that the speech constituted the first protest against Libya's presence in the borderlands. It does so by moving up in time Libya's presence in the borderlands by over a year in order to make it appear that the 1971 speech of the U.N. representative was in protest against that presence[35]. But it was not, and nothing can disguise the fact that Libya's assumption of civilian administration in that region, occurring at the end of 1972, gave rise to no official Chadian protest until over four years later. Second, Chad argues that Libya's response to Chad's interventions at the U.N. revealed Libya's acquiescence in what Chad now considers to be the boundary between the Parties.

11.46 The first argument is entirely contrived, revealing the vulnerability of Chad's conduct in not having made any public protest at all against Libya's presence in that sector of the borderlands for some five years. The second argument is refuted by the statement of Libya's representative to the U.N. at the time, who said the following:

> "Ce n'est pas la première fois que le Gouvernement du Tchad accuse ses voisins de s'ingérer dans ses affaires, mais au moins la troisième fois. Précédemment, il avait également accusé deux autres de ses voisins en faisant les mêmes allégations. Il ne faut pas prendre ces accusations pour argent comptant; elles sont en fait le reflet de problèmes internes que le Tchad n'a pas le droit d'imputer à d'autres Etats[36]."

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[35] See, CM, p. 323, para. 124; CC-M, para. 2.49.

[36] Documents officiels de l'Assemblée générale, 26^{e} session, 12 octobre 1971, para. 201.

Libya's representative also made the point that if any threats were involved they were made by Chad against Libya and could be traced to what President Tombalbaye allegedly said to the Agence France Presse:

> "Les Libyens qui veulent établir des bases au Tchad pour combattre Kadhafi me trouveront prêt à les leur fournir[37]."

11.47 It must be borne in mind that at this time, and during other subsequent interventions, these statements were made during the general debates of the General Assembly that preceded the more concrete matters to be addressed. Such a general airing of grievances, for which the General Assembly is such an important forum, is hardly the time or place to introduce a serious juridical discussion of the problems concerning a territorial dispute.

11.48 In any event, the incident lasted for no time at all. One year later, in 1972, Libya and Chad concluded a Treaty of Amity.

11.49 The next intervention of Chad before the U.N. took place in February 1978. At the time, Chad attempted to paint a darker picture of Libya's supposed intervention in the internal affairs of Chad. In truth, the situation was not like that described: Chad's civil war was raging, and the situation had become far more complex within Chad, where the warring factions were making all sorts of accusations and claims. Chad's representative at the U.N. did denounce Libya's presence in what he termed the "Aouzou Strip" at that time. This was the first time Chad had done so despite Libya's presence in the area since the end of 1972. Libya's representative replied at once, as follows:

> "La révolution existe au Tchad depuis 20 ans ... Il ne s'agit pas d'une question de frontières. Il se peut qu'il y ait un problème de frontières, mais de tels problèmes ne se traitent pas de cette façon[38]."

As to the so-called "Aouzou Strip", Libya's representative added:

> "Le représentant du Tchad nous a accusé d'avoir occupé Aouzou en 1973, mais ce n'est pas vrai, nous n'avons rien occupé[39]."

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[37] Ibid., para. 212.

[38] Ibid., para. 49. Emphasis added

[39] Ibid., para. 65.

The CM sees in this passage a denial by Libya of any claim to this territory; but this is not so at all, as Libya's delegation made clear immediately:

> "Si Aouzou comme n'importe quelle autre partie de la Libye se trouve sous administration libyenne[40]."

11.50 Thus, it is evident that there was no question of Libya occupying the region of Aouzou, as alleged by Chad, for it was Libyan territory - at least in the mind of Libya -, and a State cannot fairly be said to occupy an area that is its own territory. Libya's representative then made this important statement:

> "S'il y a un problème de frontières, nous sommes prêts à le discuter avec le Tchad. Nous disons nous, que nous sommes chez nous; les Tchadiens, eux, nous disent que nous n'y sommes pas et que nous sommes chez eux, au Tchad. C'est donc un problème classique de frontières[41]."

11.51 Chad now says that at that time (1978) "il n'existait dans l'esprit du gouvernement libyen aucune réfutation juridique crédible[42]" to Chad's position as to the boundary between them. This is just not so. As has just been shown above, Libya claimed before the Security Council that the area it occupied in the north of the borderlands belonged to Libya. It did not develop its reasons for that was hardly the appropriate place to do so. Furthermore, if Chad had been so sure of its entitlement to this region, how does it explain the conclusion of the 1980 and 1981 Treaties? The fact is that Chad withdrew its complaint to the Security Council three days after this debate - and the territorial situation had hardly changed in just three days.

11.52 In 1983, the Security Council was witness to a new Chadian complaint. As before, Chad's complaint was made in the context of Libya's alleged interference in the internal affairs of Chad; and at the time there was intense fighting going on in Chad. In its statements, Chad relied on the same legal arguments that had been developed by its representative in 1978, stressing in particular the validity of the 1955 Treaty and the fact that the 1935 Treaty was not in force. Libya's representative replied by saying this:

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[40] Ibid., para. 66.

[41] Ibid., para. 67.

[42] CM, p. 330, para. 149.

> "The people in Aouzou are Libyans and have representatives in the Libyan General People's Congress[43]."

He also pointed out the complexity of the question and the inappropriateness of dealing with such a matter before the Security Council[44], and he reminded the Security Council that in two similar disputes, concerning delimitations of the continental shelf between Libya and Tunisia and between Libya and Malta, Libya had agreed to their resolution by the Court.

11.53 Libya's representative at the time declared: "Libya's border(s) during the Ottoman era were at the city of Faya[45]". Without developing the legal arguments in any detail, he went on to say:

> "What is the purpose of the Council: to discuss legal question? Is it the International Court of Justice? Is it the Committee of Good Offices of the OUA? The Council is concerned with peace and security and discusses political issues in the first place and not legal issues[46]."

Nonetheless, Libya did allude to the rights it had inherited from the Sublime Porte. At the end of the day, the Security Council called on Libya and Chad to settle their differences by negotiations using the good offices of the O.A.U.

11.54 These debates continued before the Security Council and the General Assembly in the course of the years 1984 to 1987. Their focus was principally the situation in Chad, a situation that had not really improved. Both States claimed sovereignty over the northern part of the borderlands, popularly called the "Aouzou Strip". Chad based its claim on Article 3 of the 1955 Treaty and, thus, on "actes internationaux en vigueur" in 1951; Libya invoked its Italian colonial heritage.

11.55 In the CM, Chad has argued that if, in 1985, before the Security Council -

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[43] Séance du 22 mars 1983, para. 72.

[44] Ibid., para. 63.

[45] Ibid., para. 65.

[46] Ibid., para. 193.

> "La Libye avait disposé d'arguments supplémentaires et plus convaincants, ils auraient certainement été présentés en cette circonstance[47]."

This is certainly not so. As the record of the hearings shows, the relations between Libya and Chad were particularly stormy at the time. And it concerned essentially a political problem. As has already been mentioned above, it was Libya's view that the Security Council, being a political forum, was certainly not in a position to judge the merits of the legal problems surrounding the territorial dispute, unlike the International Court of Justice.

11.56 Thus, Libya did not attempt to plead its case before the Security Council. However, in 1988, it revealed the essential elements of its argument, such as had been developed up until then, before the O.A.U.

SECTION 5. Conclusions

11.57 Chad's theme concerning Libya's conduct is expressed in this way in the CC-M:

> "Le comportement passé de la Libye est tout à fait incompatible avec ses revendications actuelles ...[48]."

Chad goes on to say that Libya -

> "... avait, indépendamment de l'accord de 1955, acquiescé à l'affirmation française relative à la localisation de la frontière entre la Libye et le Tchad[49]."

Thus, Chad's theme is based on the supposed acquiescence of Libya resulting from its conduct after the signing of the 1955 Treaty. But as has been shown in the analysis above of Libya's conduct, no such thing is demonstrated by Libya's conduct. If anything, it was the conduct of Chad during this period that raises a question of acquiescence.

11.58 Libya did not consider that the 1955 Treaty delimited its boundary with Chad or that it had carried out the mandate of Resolution 392(V), which reflected the view of the General Assembly that such a boundary had up until then (December 1950) not been delimited.

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[47] CM, p. 339, para. 180.

[48] CC-M, para. 2.108.

[49] CC-M, para. 2.112.

11.59 In 1960, Libya celebrated the gaining by Chad of its independence. No doubt, in the next few years, negotiations to delimit a boundary might have begun. But both countries lacked the qualified people and, as the pleadings of the Parties have shown, the legal complexity of the case is such that neither State could have understood its real dimensions at the time.

11.60 For a short period after Chad's independence, the situation between the two States disintegrated and diplomatic relations were severed. Chad seized the opportunity in 1971 to denounce what it described as Libya's expansionist aims, which Libya denied. Thus, in the years between 1960 and 1971, the territorial issue was not raised, and this did not imply acquiescence of any sort by either State. The question reflected in Resolution 392(V) merely remained open and unresolved.

11.61 Then in 1972 the situation changed. In his letter of 28 November 1972, Chad's President recognised the merits of the Libyan claim to the sovereignty over what he called the "Aouzou Strip". Such a recognition of sovereignty could only have been in response to Libyan claims. Thus, the problem of delimiting the boundary between Libya and Chad was placed then on their common agenda.

11.62 There is no issue between the Parties that, starting at the end of 1972, Libya installed its governmental administration throughout the northern part of the borderlands. It was a peaceful administration which Libya installed, and it was common knowledge throughout the world that this had occurred, as France's Ambassador to Chad has recorded[50].

11.63 In the face of this development, Chad not only registered no protest but it impliedly consented when it entered into the 1972 and 1974 Treaties with Libya. While it is true that in 1977 Chad protested before the O.A.U against Libya's presence in what it claimed to be Chad's territory, and repeated this protest before the Security Council in 1978, the latter protest was at once withdrawn. In any event, this protest continued for a very limited time and was then contradicted by Chad's conduct in entering into the 1980 and 1981 Treaties with Libya.

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[50] See, LM, para. 5.560, et seq.

11.64 In this regard, the jurisprudence cited by Chad works against Chad rather than Libya[51]. In the Temple of Préah Vihear case, the Court took into consideration, in finding Thailand's conduct to constitute acquiescence, the absence of protest by that State against manifestations of sovereignty by Cambodia. The Court acted similarly in the King of Spain arbitration. Thus, it would appear that, in the light of Libya's clear and continuous behaviour in the northern borderlands from 1973 on, Chad's positive acts of entering into treaties with Libya and the absence of any sustained protest from Chad until 1983 constituted its acquiescence and should prevent Chad now from making a claim to these areas of the borderlands.

11.65 There is no doubt that starting in 1983, Chad's conduct changed: it reversed its prior attitude as expressed, inter alia, in the Tombalbaye letter and laid claim to the so-called "Aouzou Strip". But this did not erase its earlier acquiescence. Furthermore, Libya contested Chad's claim and continued to affirm that this region belonged to Libya. It continued to govern a substantial part of the northern borderlands.

11.66 Thus, if the attitude and conduct of Libya and Chad are compared in respect to this region in the years after 1960 right up until now, the following conclusions emerge:

- Between 1960 and 1972, no delimitation was attempted and the matter of the boundary between them was raised by neither State;

- Between 1973 and 1983, in the face of Libya's presence in the northern part of the borderlands, Chad by its conduct recognised Libya's sovereignty there but then, in 1983, reversed this position;

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[51] See, CC-M, para. 2.111, et seq.

- Libya's conduct from 1972 was a clear and consistent manifestation of sovereignty over the northern part of the borderlands;

- If the conduct of either Party constituted acquiescence or at the very least inconsistency, it was the conduct of Chad not Libya.

11.67 Chad's position based on acquiescence, unfounded as it is, is not just aimed at the region it calls the "Aouzou Strip". For Chad attempts to stop Libya from presenting its claims to areas that extend well beyond the territory falling within that region, reproaching Libya for not having formulated such claims in the past before the initiation of this case before the Court.

11.68 It should be emphasised here that the settlement of a question of attribution of territory fits quite naturally within the framework of bilateral negotiations between the parties to a territorial dispute. Now there is no question that Chad's internal situation from 1965 until the end of the 1980s was hardly suited to deal with negotiations of this kind. The situation in Chad was characterized by rebellion and then civil war, by unsuccessful attempts at national reconciliation and by repeated intervention of French forces. Few, if any, African States have had such a tragic beginning as a newly independent State. Such events could not have failed to engender great concern in Libya, where the memory of the French occupation of Fezzan was still fresh as well as the great difficulties encountered by Libya in getting France to withdraw, including the French Government's refusal to honour its obligations under the 1955 Treaty until it had been awarded additional consideration in the form of the Edjélé oil field.

11.69 In spite of these conditions, it was possible for Libya and Chad to enter into agreements of amity of a general nature, such as the 1972, 1974, 1980 and 1981 Treaties. For these required only the political will to do so. But to attempt to settle then the territorial dispute between Libya and Chad was of an entirely different order of difficulty, requiring the expertise to examine legal files of great complexity.

11.70 This can be seen from the work of the O.A.U. where the difficulties of even collecting the complete dossier became apparent. In the report of the Subcommittee of 19 May 1987, well after work had begun, the Subcommittee emphasised "le caractère non exhaustif de la documentation" and added that "la délégation tchadienne s'est engagée à faire parvenir au Président du Comité les textes des deux accords par voie diplomatique[52]". At the meeting of the Subcommittee on 20 May 1987, several experts considered that there was a need for an "éclairage historique". If the list of accords deposited by Chad with the Subcommittee is examined, it can be seen how far it is from being complete[53].

11.71 Libya certainly does not blame Chad for these gaps; they merely illustrate the difficulties encountered by the Parties in trying to assemble the very extensive historical and legal files. This explains why Libya was not able for a long time to express with any precision its territorial claims, other than by the use of the handy phrase "Aouzou Strip".

11.72 Libya pointed this out to the U.N., when it said:

> "Frontier problems are not easy to resolve ... But there are things that must be examined and discussed[54]."

11.73 The fact is that if Chad had made the effort to really examine Libya's attitude at the time, rather than repeating the French thesis that it knew by heart, Chad would have understood the essential position of Libya as it has now been formulated. For example, in 1983, Libya invoked its Ottoman heritage and mentioned that Faya had once been occupied by the Ottomans. In 1985, Libya invoked the Italian rights which it had inherited. Even a superficial consideration of the implications of these sources of Libya's territorial claims would lead to the realisation that the dispute was not narrowed to the so-called "Aouzou Strip". And there is not the slightest indication of Libya's acquiescence in Chad's claims as set out to the U.N. in 1983.

11.74 Chad argues that the spirit of the Accord-Cadre of 31 August 1989, the basis of the Court's jurisdiction, as understood both by Chad and the O.A.U., was that it concerned only the "Aouzou Strip". This is incorrect and unsupportable. To pick just one example, it will be recalled that in 1988 Libya indicated to the O.A.U. that its rights stemmed from its Ottoman heritage. This by itself revealed that the scope of the dispute far exceeded the region called the "Aouzou Strip". Chad was not unaware of this fact when it signed the Accord-Cadre. As has already been pointed out in Chapter III above, by not making a formal objection to the Court's competence to deal with the dispute as presently framed by the pleadings of the Parties, Chad has now waived the right to do so. Such an objection could have not have been made, in any event, because of the history of the relations between the two States.

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[52] CC-M, Annex 136.

[53] CC-M, Annex 137.

[54] S/PV. 2060, 17 February 1978, para. 71.

11.75 But putting aside the procedural aspects of the case, Chad has invoked Libya's conduct in connection with the merits of the case, contending that its conduct is not compatible with Libya's present claim before the Court. There are two elements of this line of argument. The first is acquiescence, which has already been discussed and found wanting. The second is estoppel. Here Chad claims that Libya has modified its case, has "blown hot and cold[55]", leading to a situation of estoppel.

11.76 The Court has considered claims of estoppel in a number of different situations. In the North Sea Continental Shelf cases the Court said the following regarding estoppel:

> "... that is to say if the Federal Republic were now precluded from denying the applicability of the conventional régime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that régime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice[56]".

In the Gulf of Maine case, the Court added the following:

> "... but even disregarding the element of detriment or prejudice caused by a State's change of attitude, which distinguishes estoppel stricto sensu from acquiescence, it nevertheless presupposes clear and consistent acceptance[57]."

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[55] See, CC-M, para. 2.14.

[56] North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 26, para. 30.

[57] Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, at p. 309.

11.77 None of the conclusions indicated by the Court finds application to the present case. Libya has not modified its claim, for in the statements of its representatives before the U.N. it was not presenting a claim but rather defending its presence in the north of the borderlands. This necessarily focussed attention on the so-called "Aouzou Strip" for much of that region happened to be where Libya had established its governmental administration. However, the broad outline of what Libya would claim gradually emerged, particularly when it furnished documents believed relevant by Libya to the O.A.U. Subcommittee. For these documents related to Libya's Ottoman and Italian heritage.

11.78 There is also no showing of any prejudice to Chad, one of the conditions of estoppel set out by the Court in the North Sea Continental Shelf cases. It is true that Chad asserts in the CC-M that:

> "Le Tchad a, de plus, consenti à la soumission à la Cour d'un différend relatif à la bande d'Aozou et à la frontière qui l'encadre, et son Mémoire est rédigé en conséquence[58]."

This suggests that Chad has been prejudiced, but the statement is not accurate. Chad signed the Accord-Cadre in full knowledge of Libya's claim to have inherited the rights and titles of the Ottoman Empire and Italy in its brief participation in the O.A.U. discussion in 1988. This made clear that the dispute was not limited to the "Aouzou Strip".

11.79 Clearly, there has been neither acquiescence by Libya nor a situation that gives rise to estoppel against Libya. Chad's arguments on both counts must be rejected as without any foundation. It is quite true that, as this case has developed in the written pleadings, the positions of both Parties have evolved in the light of the evidence produced and the arguments of the other side. This is normal for any case of this kind, and the evolution of Chad's case has, in the view of Libya, been considerable. This is not a matter that gives rise to blame on either side; but it demonstrates that the territorial dispute in this case is not a simple one to resolve, as Chad has contended.

11.80 As Libya has maintained over the past 30 years, the dispute is very complex and the relevant file is enormous. It is foolhardy for a State to try to make out its claim in such a case before political organs such as the Security Council, the General Assembly and the O.A.U.. The Court is the proper forum before which to present such a claim; and it is only before the Court that Libya has attempted to set out its claim.

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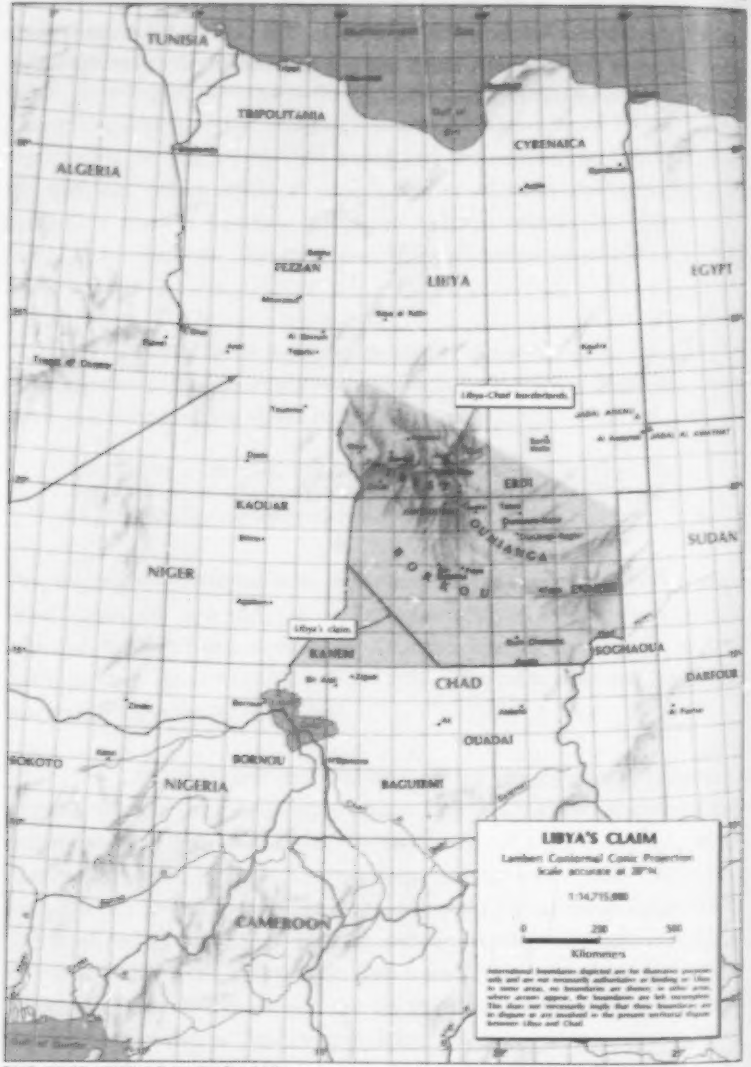
[58] CC-M, para. 2.116.

LR 32


TUNISIA
TRIPOLITANIA
CYRENAICA
ALGERIA
FEZZAN
LIBYA
EGYPT
Libya-Chad borderlands
KAOUAR
ERDI
SUDAN
NIGER
BORKOU
OUNIANGA
ENNEDI
Libya's claim
KANEM
SOGHAOUA
DARFOUR
CHAD
OUADAI
SOKOTO
BORNOU
NIGERIA
BAGUIRMI
CAMEROON
LIBYA'S CLAIM
Lambert Conformal Conic Projection
Scale accurate at 20°N
1:14,715,000
0
250
500
Kilometres

Specially prepared for presentation to the International Court of Justice

SUBMISSIONS

Having regard to the various international treaties, agreements, accords and understandings and their effect or lack of effect on the present dispute, as set out in Libya's Memorial, Counter-Memorial and in preceding parts of this Reply;

In view of the other facts and circumstances having a bearing on this case, as discussed above, and in Libya's Memorial and Counter-Memorial;

In the light of the conduct of the Parties, of the conduct of other States or political, secular or religious forces, whose conduct bears on the rights and titles claimed by the Parties, and of the conduct of the indigenous peoples whose territories are the subject of this dispute;

In application of the principles and rules of international law of relevance to this dispute;

May it please the Court, rejecting all contrary claims and submissions:

To adjudge and declare, as follows:

1. That there exists no boundary, east of Toummo, between Libya and Chad by virtue of any existing international agreement.

2. That in the circumstances, therefore, in deciding upon the attribution of the respective territories as between Libya and Chad in accordance with the rules of international law applicable in this matter, the following factors are relevant:

   (i) that the territory in question, at all relevant times, was not *terra nullius*;

   (ii) that title to the territory was, at all relevant times, vested in the peoples inhabiting the territory, who were tribes, confederations of tribes or other peoples owing allegiance to the Senoussi Order who had accepted Senoussi leadership in their fight against the encroachments of France and Italy on their lands;

(iii) that these indigenous peoples were, at all relevant times, religiously, culturally, economically and politically part of the Libyan peoples;

(iv) that, on the international plane, there existed a community of title between the title of the indigenous peoples and the rights and titles of the Ottoman Empire, passed on to Italy in 1912 and inherited by Libya in 1951;

(v) that any claim of Chad rests on the claim inherited from France;

(vi) that the French claim to the area in dispute rested on "actes internationaux" that did not create a territorial boundary east of Toummo, and that there is no valid alternative basis to support the French claim to the area in dispute.

3. That, in the light of the above factors, Libya has clear title to all the territory north of the line shown on Map 105 in Libya's Memorial, on Map LC-M 55 in Libya's Counter-Memorial and shown again here on Map LR 32, that is to say the area bounded by a line that starts at the intersection of the eastern boundary of Niger and 18°N latitude, continues in a strict southeast direction until it reaches 15°N latitude, and then follows this parallel eastwards to its junction with the existing boundary between Chad and Sudan.

(Signed) ....

Abdullati Ibrahim El-Obeidi
Agent of the Socialist People's
Libyan Arab Jamahiriya

INTERNATIONAL COURT OF JUSTICE

TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)

REPLY

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S
LIBYAN ARAB JAMAHIRIYA

SUPPLEMENTARY ANNEXES
VOLUME 2
14 SEPTEMBER 1992

No. 1

SUPPLEMENTARY ANNEX. NO. 1

EXPLANATORY GUIDE TO ABBREVIATED REFERENCES

Anglo-French Declaration, 5 August 1890	**1890 Declaration**
Anglo-French Convention, 14 June 1898	**1898 Convention**
Anglo-French Additional Declaration, 21 March 1899	**1899 Declaration**
Franco-Italian Accord of 14-16 December 1900 (Exchange of letters between M. Barrère and M. le Marquis Visconti-Venosta)	**1900 Accord**
Anglo-Italian Accord of 11-12 March 1902	**1902 Anglo-Italian Accord**
Franco-Italian Accord of 1-2 November 1902 (Exchange of letters between M. Barrère and M. Prinetti)	**1902 Accord** **(1900-1902 Accords)**
Franco-Ottoman Convention delimiting a boundary between Tunisia and Tripolitania, 19 May 1910	**1910 Franco-Ottoman Convention**
Treaty of Ouchy between the Ottoman Empire and Italy, 15 October 1912	**Treaty of Ouchy**
Franco-Italian Agreement of 28 October 1912	**1912 Agreement**
Agreement between France, Russia, Great Britain and Italy, signed in London, 26 April 1915	**1915 (Secret) Treaty of London**
Convention between Great Britain and France, 8 September 1919	**1919 Anglo-French Convention**
Accord between France and Italy on the boundary between Tripolitania and France's African Possessions, Paris, 12 September 1919	**1919 Franco-Italian Accord**
Treaty of Lausanne, 24 July 1923	**Treaty of Lausanne**
Protocol between France and Great Britain defining the boundary between French Equatorial Africa and the Anglo-Egyptian Sudan, 10 January 1924	**1924 Protocol**

Anglo-French Declaration of 21 January 1924 agreeing to Protocol of 10 January 1924	**1924 Declaration**
Italo-Anglo-Egyptian Accord relating to the Libya-Sudan Boundary, 20 July 1934	**1934 Accord**
Treaty of Rome between France and Italy, 7 January 1935	**1935 Treaty**
Map Annexed to the *Livre jaune* text of the Anglo-French Additional Declaration of 21 March 1899	**Non-Annexed Map** **Livre Jaune Map**
Statement of Italian Foreign Minister Prinetti to Italian Parliament, 14 December 1901	**Prinetti Declaration**
Treaty of Peace with Italy, Paris, 10 February 1947	**1947 Italian Peace Treaty**
Treaty of Amity between France and the Royal Kingdom of Libya, 10 August 1955	**1955 Treaty**
Agreement between Libya and France modifying part of Libya's frontier with Algeria, 26 December 1956	**1956 Agreement**
1899 Declaration line which runs from the point of intersection of the Tropic of Cancer with 16°E longitude southeast to 24°E longitude until it meets the frontier of Darfour to the north of 15°N latitude	**Southeast Line**
1899 Declaration line as modified by the 1919 Anglo-French Convention (terminal point at the intersection of 19°30'N with the 24th meridian)	**1919 Line**
Boundary agreed between Italy and France in the 1935 Treaty of Rome	**1935 Line**

No. 2

SUPPLEMENTARY ANNEX, NO. 2

COMMENTARY ON THE CC-M, CHAPTER 10, AND CHAD'S MAP ATLAS

Introduction

1. The CC-M has vigorously reacted to the abundant use of maps in the LM by submitting a Map Atlas (Vol. II) with 162 maps. Chapter 10 of the CC-M is devoted to a discussion of these maps and their alleged significance. In addition, a few maps appear in Vol. I of the CC-M. There is a general map of Chad inside the cover page of Vol. I; five U.N. maps, also appearing in the Map Atlas, are reproduced at pages 425-427 (U.N. Map 1406, February 1963, and four small U.N. maps, appearing in the Map Atlas as No. 149 - which are blown up in the CC-M: U.N. Map No. 2968, June 1978, No. 2968, Rev. 2, March 1981, No. 3156, December 1981, and an unnumbered, undated map claimed by Chad to have been issued in 1968); at page 433 of Vol. I, the reproduction of a map in the book of U.S. Ambassador Villard published in 1956 appears; finally, at page 254 of Vol. I, there is a sketch map entitled "Progression de l'Occupation Française - 1900-1914".

2. The CC-M appears to claim that this collection of 162 maps is rather complete ("toutes les cartes qu'il a pu recenser"). Chad says that these maps have been submitted to offset the erroneous impression given by Libya's maps; and Libya is taken to task for constructing its own maps in order to highlight 15°N latitude and the absence of a southern boundary, as well as for its arbitrary choice in its selection of published maps. Libya's maps are said to be aimed at demonstrating a natural boundary and at suggesting the absurdity of a boundary running through the Tibesti massif.

3. Only some 40 of Libya's 109 maps in the LM were original maps. The remainder were prepared to assist the Court to understand a complex case, a use to which Chad has not put its maps[1]. The various maps presented in the LM setting forth the geographical characteristics of the region were part of this explanation: it would be absurd not to inform the Court as to the various elements of geography in a case involving a territorial dispute. Libya is not suggesting a natural boundary; although the LC-M does again mention these

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[1] See, LM, paras. 3.04-3.06 and fn. 4, p. 26.

geographical factors in Part XI as "equitable" criteria relevant to the attribution of territory.

4. There are a number of aspects of Chad's map display and discussion that require special attention. These concern the following:

- Maps omitted;
- The 1899 Non-Annexed Map annexed to the Livre jaune publication of the 1899 Declaration;
- The U.N. maps;
- Libyan Petroleum Regulation No. 1 and Map No. 1, which went into effect in August 1955, a few days after the signing of the 1955 Treaty;
- The use of disclaimers in publishing maps;
- The positions taken by the Geographer of the U.S.

Each of these subjects will be taken up below in the course of discussing the various groups of maps.

5. Chad has suggested a number of themes and has matched the maps up with these themes. Citing the Beagle Channel arbitration, Chad suggests that this accumulation of maps, all showing the 1919 line after 1955, has considerable probative value[2]. In other words, the CC-M suggests that it is widely accepted, as these maps allegedly demonstrate, that there is a boundary between Libya and Chad that follows the 1919 line - and that this alleged wide acceptance constitutes a sort of status quo that cannot now be disturbed by Libya, who never before this case was brought suggested a line other than the 1935 line and certainly not one that would lay claim to almost one-half of Chad. This argument seems to be a kind of substitute for uti possidetis juris based on a combination of acquiescence and estoppel; and it has been dealt with in Vol. 1 of this Reply.

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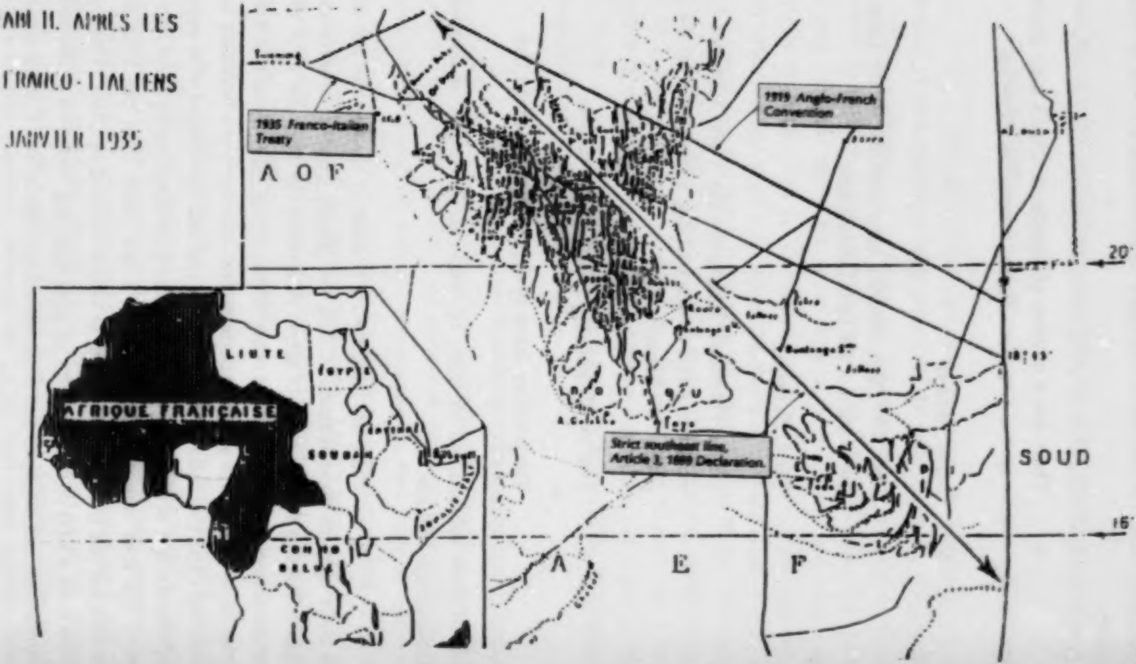
[2] See, para. 35, below.

OAU MAP

RTE ETABLIE APRES LES
CORDS FRANCO-ITALIENS
DU 7 JANVIER 1935


1935 Franco-Italian Treaty
1919 Anglo-French Convention
Strict southeast line, Article 3, 1899 Declaration.
A O F
A E F
SOUD
20°
16°
AFRIQUE FRANÇAISE
LIBYE
EGYPTE
SOUDAN
CONGO BELGE

LR 33

Source: OAU Subcommittee Report (II), [illegible]
[illegible]

6. Chad suggests that the map evidence shows that after 1919, in fact, no alternative line to the 1919 line was presented other than the 1935 line. This is clearly wrong. Italy's official maps before and after the 1935-1938 period deliberately showed no boundary east of Toummo (see, Maps LC-M 52, 53 and 54); and Italy consistently maintained that the 1899 line was a strict southeast line and portrayed this on its maps. The official British maps between 1899 and 1919 also portrayed the 1899 line as a strict southeast line (see, LM Map No. 63; Maps LC-M 14A and 14B). It is of interest that the map used to illustrate the O.A.U. reports and resolutions also shows the 1899 line as a strict southeast line (see, Report of the O.A.U. Subcommittee of Experts (II) of 27 January 1988 (Map LR 33))[3]. The O.A.U. map was not included in the Chad collection of 162 maps.

Detailed Discussion of Maps in Chad's Map Atlas

1899-1919

7. Chad divides its maps into a number of groups. Maps 1 to 9 are said to be travaux for the 1899 Declaration. These are the Justus Perthes (1892) and the French military (1896) maps, the significance of which has been brought out in the LC-M (see, LC-M, paras. 4.71 and 4.182, et seq.). These maps portray the state of knowledge of the geography of the region at the time the 1899 Declaration was negotiated and, as the LC-M has demonstrated, clearly show that the line described in Article 3 of the 1899 Declaration was intended to be a strict southeast line. Several additional points of interest emerge from these maps:

- The Perthes map (Map 2) depicts the notional Tripolitanian boundary as a faint yellow dashed line; this is probably the origin of the wavy, dashed line that found its way onto the Non-Annexed Map (see, Vol. 1, para. 6.55 of this Reply and Map LR 13);

- On the Perthes and the French military maps (Maps 3 and 6) a northern boundary for Darfour is shown intersecting 24°E at about 15°20'N; a strict southeast line would intersect just north of that point (Maps LR 10A and 10B)[4]. Article 3 of the 1899 Declaration provided that the southeast line after intersecting 24°E would continue south along that line "jusqu'à sa rencontre au Nord du 15° parallèle de latitude avec la frontière du Darfour telle qu'elle sera ultérieurement fixée". If these maps are compared with the 1916 British Map (LM Map No. 63), it will be seen that the Darfour boundary is shown on the 1916 map intersecting 24°E at about 16°30'N, over 1° of latitude further north than the earlier maps. This confirms the conclusion that in 1899 a strict southeast line was intended by Article 3 and refutes the argument at CC-M, para. 8.109, based on what the British negotiators in 1919 wrongly perceived on the basis of later British maps showing the Darfour boundary further to the north.

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[3] LM, Annexe p. 82; see, LM, Livre VI, p. 375, for a reproduction of this O.A.U. map.

8. Maps 10 to 23 are described by Chad as travaux for the 1919 Convention - an incorrect application of the term. Maps 10 to 14 are all versions of the 1899 Livre jaune map appearing in the BCAF[5] or Le Figaro. Surprisingly, the Livre jaune map itself (LM, Map No. 40) is not produced. This map is also linked by Chad more to the 1902 Accord than to the 1899 Declaration. Chad adds that all these maps "tiennent pour acquise" the Toummo-Tropic of Cancer segment. This is not so, although Chad has touched up the maps with a pink-coloured line to make it seem to be so (see, Maps 10, 11 and 12; see, also, Maps 16, 17, 19, 20 and 21, none of which support the Toummo-Tropic of Cancer segment as a boundary). This segment of the boundary is one of the weak links in Chad's case. Of particular importance is Map 16, a 1912 French map (similar to Map LC-M 28A) that clearly portrays no boundary between Toummo and the Tropic of Cancer. Both maps have been reproduced in Vol. 1 as Maps LR 15A and 15B. Map LR 15A appears here again. Chad's Map 12 has been reproduced in Vol. 1 of this Reply, together with the Livre jaune map, to point out how Chad's version of the map has been distorted to show the wavy, dashed line encircling Tripolitania as a boundary, although it is not so shown on the Livre jaune map. (See, LC-M, para. 4.53, et seq. and Maps LC-M 25 and 26; and Maps LR 12A and 12B, referred to at para. 6.54., Vol. 1).

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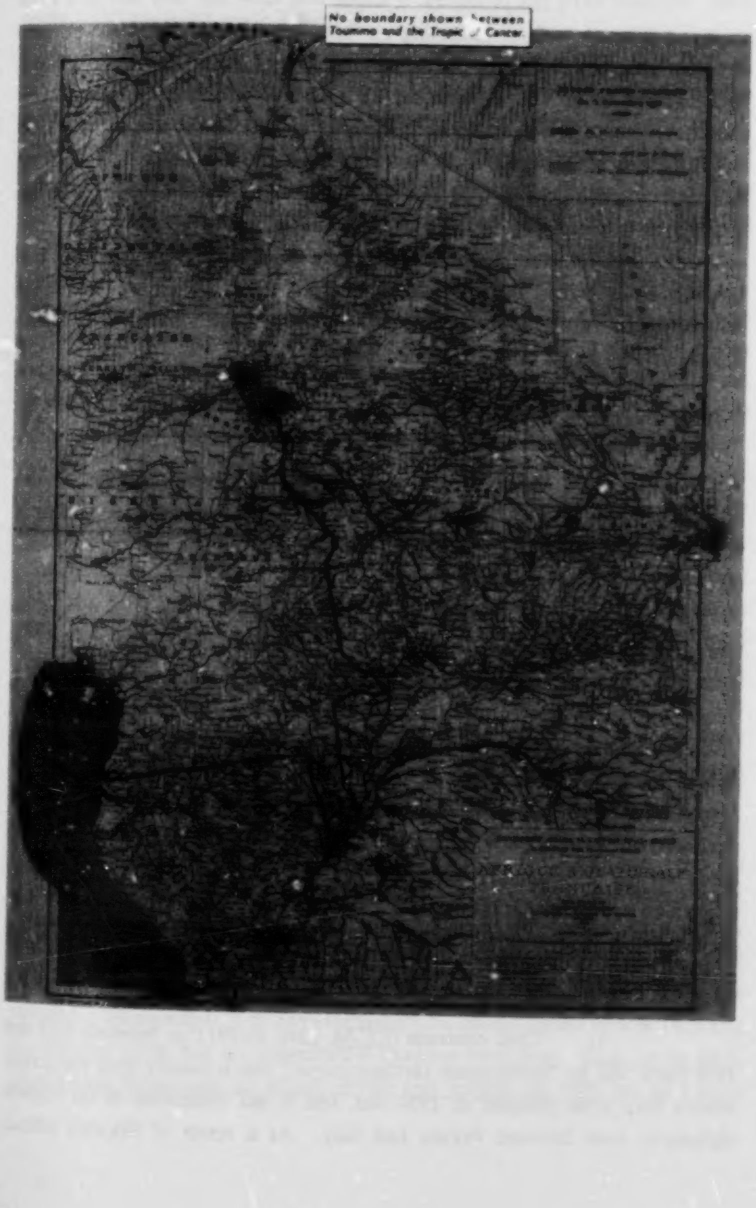
[4] These maps appear in Vol. 1, para. 6.18.

[5] Bulletin du Comité de l'Afrique Francaise.

LR 15A-1

16 *Carte française au 1:5 000 000*



No boundary shown between Toummo and the Tropic of Cancer.

9. Chad describes this group of maps up until 1919 as being "still hesitant" as to the direction of the line. However, there are Italian maps of 1906, 1912 and 1917, not produced by Chad, that show the 1899 line as a strict southeast line, as well as indicating no boundary beyond the 1910 Franco-Ottoman boundary ending at Ghadamès (see, Maps LR 16A-1, 16A-2, 16B and 16C, referred to in Vol. 1, para. 6.112). What is also missing from Chad's collection of maps between 1899 and 1919 are the three British maps (1913, 1914 and 1916) that reveal that Great Britain interpreted the 1899 line to follow a strict southeast direction (Maps LC-M 14A and 15A and LM Map No. 63). There was nothing hesitant about the Italian and British maps. However, after 1919, Chad says there was no more hesitation; the only departures from the 1919 line allegedly being Italian maps described in para. 10.29, CC-M, as "croquis de demonstration" reflecting the expansionist attitude of the Ministry of Colonies. This again is wrong, as will be explained below.

1919-1935

10. Maps 24 to 49 cover the period 1919 up to 1935. Italian maps (LM Maps Nos. 68-72), issued during this period, portrayed a number of alternative claims or "programs"; but Chad overlooks the fact that the basic map on which the various claim lines were placed was an official Italian map published in 1926 (Map LC-M 52 referred to there at para. 8.33). This map showed no boundary east of Toummo. Chad seeks to discredit the Italian Ministry of Colonies (which issued this map and subsequent Italian maps) on the basis of a "mock war" between the Italian Ministries of Foreign Affairs and Colonies in which the Ministry of Colonies was constantly overruled. Chad's alleged war is a phoney war as is shown, inter alia, by the 1930 incident over the Italian School Map Atlas (see, LM, paras. 5.278-5.279 and Maps Nos. 78 and 79). This subject is dealt with in Supplementary Annex, No. 5, Vol. 2, of this Reply. It is shown there, based on the documentary evidence, that the two Italian Ministers were in substantial agreement. It is apparent that Chad's "mock war" theory was in part devised to attempt to explain away the official Italian maps showing no Libyan southern boundary.

11. Chad contends (CC-M, para. 10.29) that between 1919 and 1935 there was no "contestation cartographique"; this is exactly what the Italian School Map Atlas incident of 1930 was, and it was conducted at the highest diplomatic level between France and Italy. As a result of France's official

complaint, in 1930-1931 the Italian Ministry of Foreign Affairs instructed that the school maps be changed to show no southern boundary, in conformity with the 1926 Italian map. There is no record of any further French protest. (*See*, Vol. 1, paras. 6.119 and 6.202, and *LR Map* 25.)

12. Maps 24 to 49 of the Chadian Map Atlas, which cover the period 1919-1935 - a period of intensive negotiation between Italy and France over the southern boundary - portray none of the various proposals and claims of Italy and France. The 1919 Peace Congress map and the subsequent 1924 demarcation map are reproduced (Maps 24, 26 and 27); and Map 27 is stated to be the official recognition by Great Britain of the northeast limits of Chad. The reasons why this conclusion is totally wrong are set out in Vol. 1, paras. 6.180 and 9.26, *et seq*. The map of Lt.-Col. Tilho (Map 28) appears (as issued in 1920) with the southeast line labelled "théorétique"; but Chad offers no explanation of the use of this term, which seems to imply that the line shown had not achieved the status of an international boundary. The Tilho map reissued in 1925 (Maps 30 and 31) shows no boundary at all, an omission that Chad also does not explain.

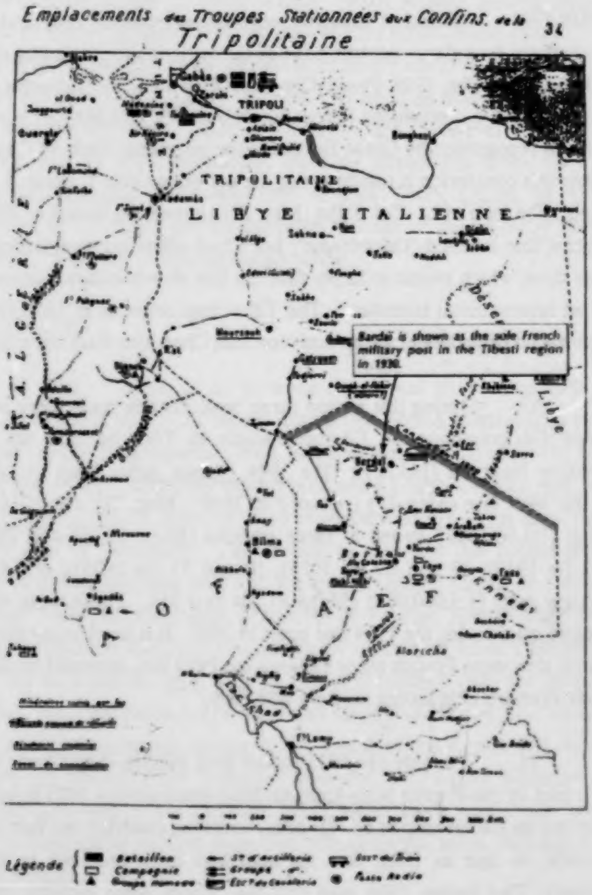
13. During this period three basic French maps were issued by the Service Géographique de l'Armée (which in 1940 became the Institut Géographique National (I.G.N.)): the *1924 French Army Map* (1:2,000,000) showing the 1919 line (Map 29) (reissued in 1940 - Map 71); the *1925 French Army Map* (1:1,000,000), issued in three editions (Maps 33, 34 and 35; 48 (in 1932); 52 (in 1940); 53 and 67 (in 1935); 50 and 51 (in 1935)); and the *1931 French Army map* (1:5,000,000) (Maps 47, 54 and 55). These were the basic French maps, all showing the 1919 line prior to 1935. It is hard to see what these maps prove; they were French maps showing the 1919 line, as would be expected, for this was France's negotiating position with Italy.

14. The only pre-1935 Italian map produced by Chad (Map 32) is in fact a copy of the French *Non-Annexed Map* attached to a 1925 Italian study, and hence not an Italian map at all. (It does, however, establish the fact that Italy was unaware, as late as 1925, that no map had been annexed to the 1899 Declaration.) The Italian 1926 map and the School Atlas incident maps are completely disregarded. Yet they established the official Italian view in 1926 and in 1930 that Libya had no conventional southern boundary. *Thus, up to 1935, Chad's Map Atlas omits all official British that portray the 1899 line as a strict*

LR 36

41 ***Croquis à l'échelle approximative du 1:15 000 000 de 1930 indiquant l'emplacement des troupes stationnées aux confins de la Tripolitaine.***

La frontière de 1899 est tracée.

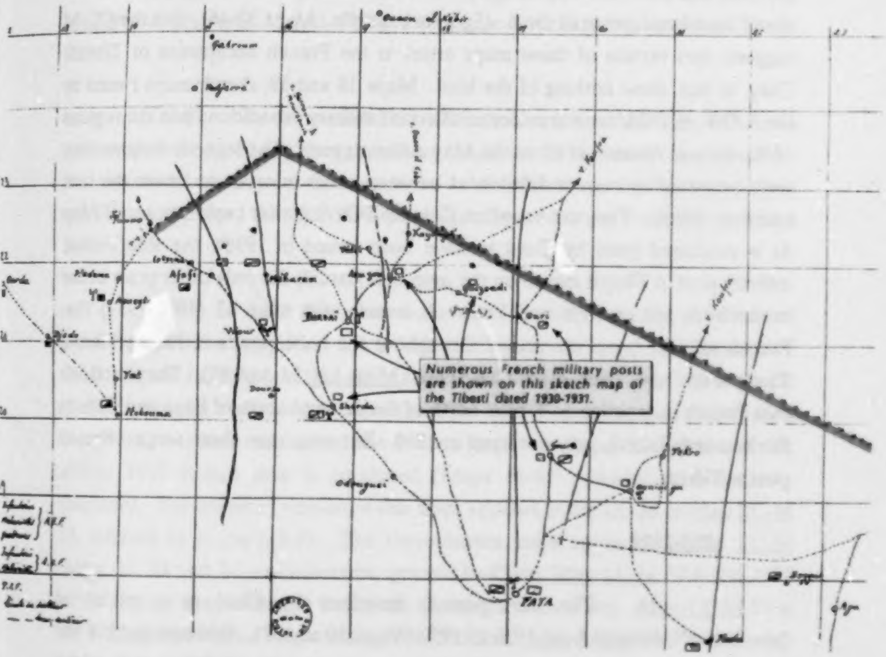

Emplacements des Troupes Stationnees aux Confins de la Tripolitaine
34
TRIPOLI
TRIPOLITAINE
LIBYE ITALIENNE
Mourzouk
Kat
Bilma
A. O. F.
A. E. F.
Bardaï
Tibesti
Désert de Libye
Ennedi
Tchad
Légende
Bataillon
Compagnie
Groupe nomade
Sᵒⁿ d'artillerie
Groupe
Escᵒⁿ de Cavalerie
Sectᵒⁿ du Train
Poste Radio

Bardaï is shown as the sole French military post in the Tibesti region in 1930.

LR 35

43 ***Croquis au 1:5 000 000 "Occupation des confins tripolitains 1930-31".***

Etabli par les militaires français. La frontière est celle de 1919. Des points montrent l'occupation française dans les postes d'Aozou - Kayougué - Guézenti - Ouri...



Numerous French military posts are shown on this sketch map of the Tibesti dated 1930-1931.

southeast line, and all official Italian maps that, not only show the 1899 line as strictly southeast in direction, but also show no boundary east of Toummo.

15. Eight of the French military maps issued between 1919 and 1935 to be found in the Atlas are sketches to show tournées by the French, and the like, and were never officially published in such a manner that other States would have been aware of them. (See, for example, Maps 37-46). But the CC-M suggests that certain of these maps attest to the French occupation of Tibesti. They, in fact, show nothing of the kind. Maps 38 and 39, sketch maps issued by the A.O.F. in 1928, are not evidence of actual military expeditions into the regions of Bardaï and Aouzou at all, as the Map Atlas suggests. The legends indicate they were prepared to correct differences between maps in order to locate the best routes to follow. They are based on Colonel Tilho's earlier explorations. If Map 41 is examined (said by Chad to have been issued in 1930), the sole French military post in Tibesti shown on the map is at Bardaï; the only other posts in the borderlands are at Faya and Fada. It is only with Map 43 (1930-1931) that French military posts are shown throughout the borderlands including Tibesti. These maps have been reproduced here (Maps LR 34 and 35). They establish that French occupation of Tibesti north of Bardaï, and north of Faya and Fada in Borkou and Ennedi, only occurred in 1930. But even then there was no French post at Tekro.

1935-1950

16. The next period, described by Chad as a period of "confusion"[6], extends from 1935 to 1950 (Maps 50 to 107). Whereas most of the French maps after 1935 are said to have reverted to the 1919 line, most of the British, Italian, German and U.S. maps allegedly continued to show the 1935 line. Chad suggests that it was in this period of confusion that Libya issued its 1955 Regulation No. 1 with a map annexed showing the international boundaries (para. 10.31). Aside from being 5 years off on the dates, this argument overlooks the fact that Libya's Petroleum Regulation No. 1 and Map went into effect upon publication in the Official Gazette a few days after the signing of the 1955 Treaty[7]. Moreover, the annexed map did not show the 1935 line but a line that is

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[6] See, CC-M, para. 10.30.

[7] See, Vol. 1, para. 4.25.

almost identical to that shown in the 1950 U.N. Secretariat Report[8]. It should be noted here how inconsistent Chad is in claiming that this period of confusion affected Libya's 1955 Regulation and Map. For elsewhere, Chad asserts that France's U.N. representative made clear the boundary situation just before General Assembly 392(V) was adopted on 15 December 1950. Yet, in Chapter 10 of the CC-M, in its map discussion, Chad argues that until Annex I made its appearance (in early August 1955) the precise boundary was in doubt (para. 10.31).

17. In the period 1935-1938, the maps establish that, with but a few exceptions concerning French military maps, the 1935 line was incorporated. It is clear from the maps at the time of the Jef-Jef incident in 1938 that both Italy and France expected the 1935 Treaty to take effect, contrary to Chad's assertion in the CM[9].

18. After 1938, there were a few French maps that continued to show the 1935 line (see, Map 85, a 1942 I.G.N. map showing the roadwork of Chad; this was modified on Map 86 to show the 1919 line). As noted above, most non-French maps continued to show the 1935 line. But, once again, Chad does not give an accurate account of the Italian maps. A very poor version of the official 1937 Italian map is produced (Maps 64-65: Ministry of Colonies - Dardano). The coloured version of this map, appears in the LC-M as Map LC-M 53, referred to at para. 8.33. The three Italian maps appearing in the LC-M (Maps 52, 53 and 54) are otherwise ignored by Chad. Map LC-M 52 is the 1926 official Italian map, referred to earlier, showing no boundary. Map LC-M 53 is the 1937 official Italian map showing the 1935 line. Map LC-M 54 is a 1939 map by the Istituto Geografico de Agostini-Novara, which reverts to no boundary. However, Libya has recently located another official Italian map, issued by the Ministero dell' Africa Italiana in 1941, which reverts to no boundary (Map LR 16D referred to in para. 6.118, Vol. 1). It is hard to believe that Chad's researchers were unable to find any of these Italian maps.

19. Whereas official Italian maps had started to show the Ghadamès-Toummo segment by a dashed line (Maps LC-M 53 and 54), the 1941 map shows the segment as a solid line as in the 1926 map (Map LC-M 52). This

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[8] Ibid.; see, also, Map LR 2 appearing there.

[9] See, LC-M, para. 8.28, et seq.

change occurred during 1937-1938 as a result of discussions within the Italian Government concerning redefining Libya's western boundary. It was decided not to attract France's attention to this problem before settling the southern boundary. As a result, instructions went out to change the 1937 map so that the western boundary to Toummo would be shown as a solid, not a dashed, line (see, CM, Annexes 189, 190 and 192, English translations of which appear in CM, Vol. V).

20. Aside from the barely legible version of the 1937 Italian map, the only other pre-1950 Italian maps in the Map Atlas are two Italian Army maps of 1940 and 1941 (Maps 77-78). The 1940 map showed no boundary on the map proper (although the 1935 line appears on the tiny location map). This map was prepared in 1935, and it is reasonable to assume that the location map had simply been overlooked. However, the absence of a boundary accords with the 1939 and 1941 Italian maps, which Chad's Map Atlas ignores. The 1941 military map (Map 78) has the 1935 line drawn in. It is likely that this military map was used by the Armistice Commission in discussing the demilitarized zone (which it will be recalled General Grossi considered, in the 1941 Armistice discussions with France, should be based on the 1935 line even though the 1935 Treaty had not entered into force (see, LM, para. 5.360, et seq.; LC-M, para. 5.115, et seq.; and Vol. 1, para. 6.238, et seq.).

The French Map Agency - I.G.N.

21. The CC-M has made a major point of defending the competence and impartiality of the official French map agency, the Institut Géographique National (I.G.N.) (which in 1940 took over the functions of the Service Géographique de l'Armé) (see, paras. 10.39-10.42). Certainly the I.G.N.'s competence is not at issue; but this organization described by Chad as an "établissement public indépendant" is, nonetheless, subject to the policies of the French Government; boundaries placed on maps by the I.G.N. reflect the official French position. This is brought out by the very evidence Chad introduces in defence of the I.G.N. (CC-M, Annexes 100 and 101), which concerned a proposal made in 1956 to modify the Libyan boundary on French maps in France's favour, pushing the line as far east as possible.

22. The map discussed there by Chad is Map 98 in the Map Atlas. The request for modification came not from the Quai d'Orsay but from the

Direction des Carburants and was obviously inspired by the French oil companies. The I.G.N. refused to shift the line, pointing out that if it did so the French Government would be caught red-handed, for earlier maps showed a different line. The documents introduced by Chad (Annexes 100 and 101) are incomplete. They reveal, nevertheless, that the I.G.N. was quite ready to make this change, if so instructed by the French Foreign Ministry. At para. 10.42 of the CC-M, Chad makes the following assertion:

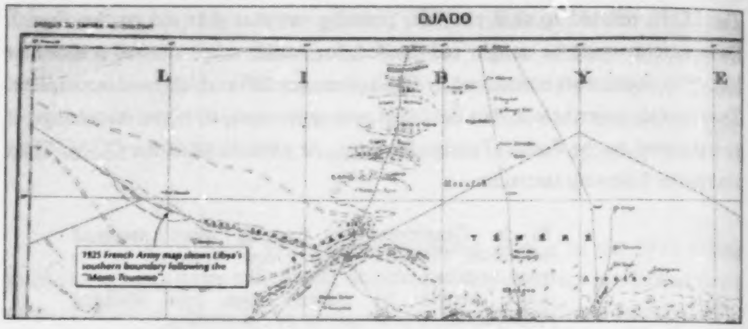
> "Si le Gouvernement français avait souhaité influencer l'Institut géographique national sur le tracé de la frontière du Tibesti, il se serait sans aucun doute heurté au même refus, qui souligne l'independance et la rigueur de l'institution."

This is flatly refuted by Chad's evidence, in which the I.G.N. made it clear that what it needed to make the requested change was a direct instruction to do so from the Government. Whoever wrote para. 10.42 failed to read the evidence.

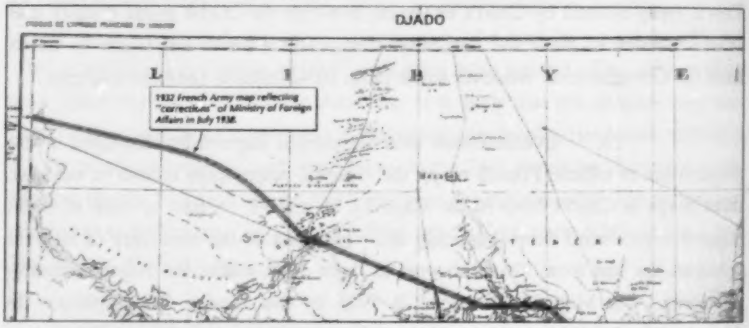
23. In connection with the alleged impartiality displayed in the preparation of official French maps, the Court is respectfully invited to examine three maps in Chad's Map Atlas: Maps 33, 68 and 98. A part of each of these maps is reproduced here (Map LR 36). The part of the boundary of interest concerns the line from Toummo west to Point 1010, where the Niger boundary intersects. On Map 33, prepared in 1925 by the Service Géographique de l'Armée (the I.G.N.'s predecessor), the line is shown as an almost straight line running along a feature called "Monts Toummo". This part of the boundary had been delimited by the 1919 Franco-Italian Accord. On Map 68, issued by the same French Army map service in 1935, a document which Chad calls "un document de travail", this portion of the boundary is redrawn to follow an arc considerably to the north of the line on the earlier map, and hence considerably more favourable to France. On this map the actual notation "corrections du Ministére des Affaires Etrangères" may be found on the upper left corner (see, also, the signature on the upper right corner of Map 68 in the Map Atlas). Map 98, issued by the I.G.N. in 1948, retains the line as corrected in 1935.

24. The point here is that in the delimitation of this part of the boundary in the 1919 Accord the line was to follow the crests of the mountains. This is what Map 33 purports to do. Following further geographical exploration of the region, the French concluded there were no "Monts Toummo" as such, and then arbitrarily swung the line north in an arc in France's favour. The I.G.N.

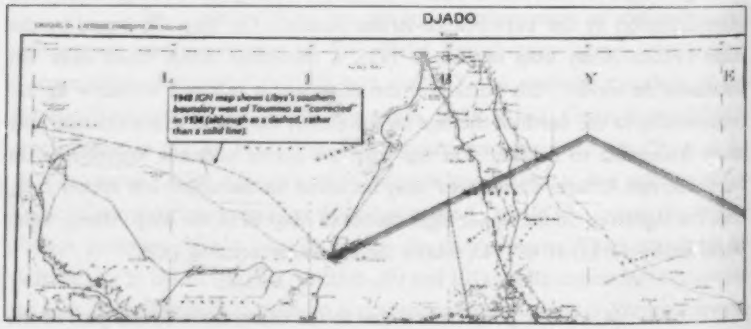
MAP NO. 33 FROM CHAD'S MAP ATLAS


DJADO
L I B Y E
1925 French Army map shows Libya's southern boundary following the "Monts Toummo"

MAP NO. 68 FROM CHAD'S MAP ATLAS


DJADO
L I B Y E
1932 French Army map reflecting "corrections" of Ministry of Foreign Affairs in July 1938.

MAP NO. 98 FROM CHAD'S MAP ATLAS


DJADO
L I B Y E
1948 IGN map shows Libya's southern boundary west of Toummo as "corrected" in 1938 (although as a dashed, rather than a solid line).

adopted this unilateral rectification of the boundary. This is an example of how French Government policy dictated how boundaries were shown on French maps. There is nothing startling about this. This is true of any official map agency. Whatever claim may be made for the competence of the Office of the Geographer of the United States, it is part of the U.S. State Department and subject to its policies as to how boundaries are portrayed on official maps and in the International Boundary Studies issued by the Geographer of the United States. The I.G.N. is no different.

25. A further commentary on the map work of the I.G.N. may be found in Supplementary Annex, No. 6.10, and the annexed Exhibits there referred to. This is a critical assessment by another geographical service of the French Government of the I.G.N.'s work, which hardly confirms Chad's assertions.

U.N. Maps

26. Chad shows great concern over the U.N. maps, which are given a lot of attention in the CC-M. Chad pointed out that Libya's representatives, rather than presenting a claim before the U.N., invariably referred to the U.N. maps - either the map with question marks attached to the 1950 Secretarial Study or to the U.N. map attached to Commissioner Pelt's first report on Libya in 1950. Of course, at those times, Libya was defending its presence in the borderlands rather than advancing a claim, for it consistently denied that either the U.N. or the O.A.U. was a proper forum for discussing the legal aspects of the territorial dispute between Libya and Chad (see, Vol. 1, Chapter XI).

27. Chad resorts here to a favorite device in its pleadings of inventing a story - in this case about the hurried preparation of the U.N. maps resulting in the erroneous inclusion of the 1935 line rather than the 1919 line (see, CM, pp. 229-230, paras. 87-92, and; CC-M, para. 2.90). As a result, Chad says, all these maps were tainted until after 1955, when the U.N., it is alleged, modified its maps to accord with the line said to have been agreed in the 1955 Treaty (para. 10.08). Chad blames this mistake on the original error made in the Four Power Commission Report and attached map. Chad's concocted story is full of holes:

- The maps attached to the 1949 Four Power Commission Report showed both the 1935 line and the 1919 line espoused by France; the only mistake concerned an erroneous reference in the French explanatory note on the map to the wrong 1924 instrument; so the organs of the U.N. were fully informed as to the precise French position concerning the line in 1949;

- The map attached to Mr. Pelt's 1950 Report (U.N. Map No. 256) was not the first relevant U.N. map; the LM (para. 5.396) exhibited U.N. Map No. 235 of December 1949 (showing the 1935 line) and U.N. Map No. 241 of January 1950, attached to the Secretarial Report (and showing a line with question marks that is clearly not the 1935 line); these maps preceded No. 256, revealing that Chad's story of a sloppy, rushed effort in 1950 to meet Pelt's request for a map is pure fiction;

- Shortly after the signing of the 1955 Treaty, the U.N. issued still another version of Map No. 256 - No. 256(A) in Arabic-bearing a date of November 1955; in March 1958, U.N. Map No. 256 Rev. 1 was issued, still showing the 1935 line;

- It was only well after Chad's independence that a U.N. map first appeared with the 1919 line - February 1963, U.N. Map No. 1404 (Map 141 in Chad's Map Atlas);

- Thus, the U.N. maps while Libya's boundaries were under active discussion did not reflect the French position clearly shown on the maps attached to the Four Power Commission Report; they were not modified after France in December 1950 corrected the error made in 1949 in referring to the wrong international agreement; and they were not modified right after the signing of the 1955 Treaty, as Chad maintains, to reflect the 1919 line;

- When Chad became independent, U.N. maps did not show the 1919 line;

- Although as a matter of general policy all U.N. maps contain a disclaimer, nevertheless, Libya has seen no evidence of any French or Chadian protest to these U.N. maps;

- It is in this regard that the map in Ambassador Villard's book is interesting, for it also shows the line appearing on the U.N. maps at the time, and was published in 1956[10].

28. The important point is that none of the U.N. maps prepared at the time that the boundaries of Libya were under active discussion - 1949 to 1956 - showed the French position as to the southern boundary. The post-1960 U.N. maps related to economic studies and were attached for purposes of showing the location of parts of Chad. Chad's boundary with Libya was not mentioned in any of these reports.

Post-1955 Maps

29. Most of the post-1955 maps in the Atlas (Maps 115-153) are French maps. However, Chad has produced a 1962 map prepared by the U.S. Geological Survey (Department of Interior) which shows the 1919 line together with a disclaimer (Map 142). A number of concession maps prepared for the Libyan Petroleum Ministry exist, as pointed out in the LM, para. 5.552. These show various lines, as the LM explained. The CC-M makes no attempt to deal with Libya's statement regarding these kinds of maps, calling it a "laborieuse explication" that "n'est guère convaincante" (para. 10.36). In fact, Chad sees this Map 142 as contributing to its acquiescence theory, even suggesting that, but for the disclaimer, it would have been a formal Libyan acquiescence.

30. This brings up again the 1955 Libyan map. There was no disclaimer on this official Libyan map. The line is neither the 1919 nor the 1935 line; it is almost exactly the line of the 1950 U.N. map attached to the Secretarial Report, but without the question marks (Map LR 2 referred to in Vol. 1, para. 4.25). France's protest against this Map is dealt with in this Reply, Vol. 1, para. 4.25 et seq. The Map Atlas also includes Libya's 1978 Map Atlas map of the southern boundary (No. 148), which follows closely the line on Libya's 1955 map (Map LR 8, referred to in Vol. 1, para. 5.58). But Chad never mentions the

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[10] See, CC-M, p. 433. Ambassador Villard was U.S Ambassador to Libya at the time of its independence.

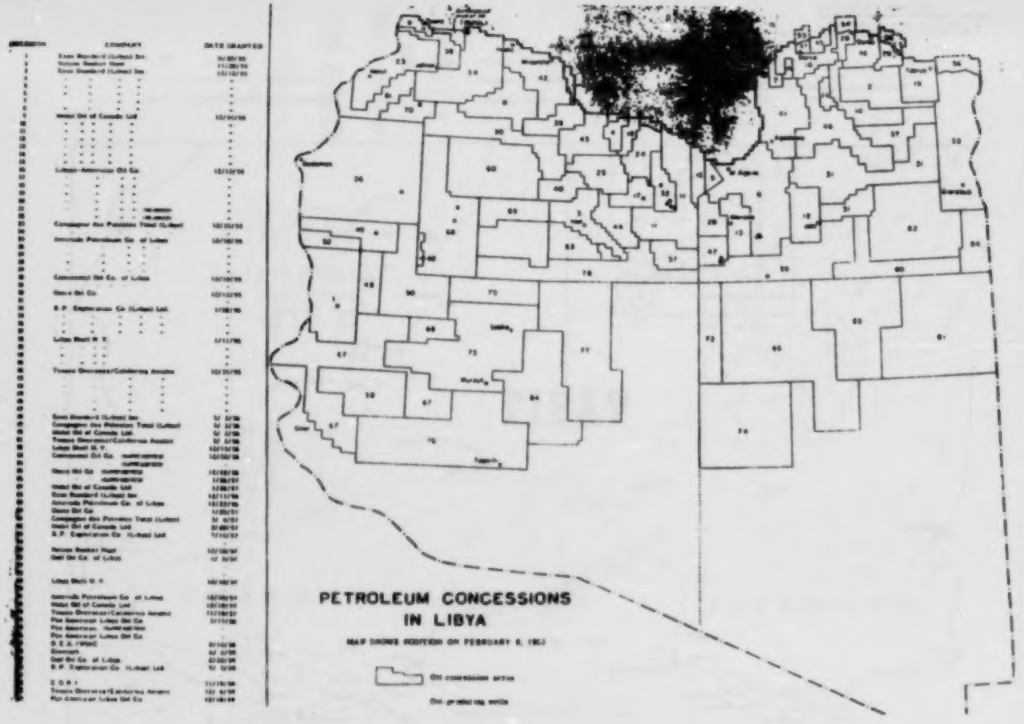
disclaimer in the Atlas, which was set out in the LM, para. 5.552. Libya has seen no indication of any Chadian protest to the Libyan Map Atlas.

31. The CC-M places a good deal of emphasis (i) on the position of the Geographer of the U.S., (ii) on two post-1955 Italian Maps (Maps 159 and 160), and (iii) on a 1985 Russian map showing the 1919 line. The U.S. Geographer takes policy direction from the State Department and makes no independent legal judgment as to the meaning of treaties. The only post-1955 Italian maps included in the Map Atlas were prepared by the Atlante Internazionale del Touring Club Italiano in Milan. A touring club map is hardly an official map setting out the views of the Italian Government! But even if many post-1955 maps issued by various countries seemed to show a general consensus in favour of the 1919 line, some of them indicated the boundary was in dispute and many of them contained disclaimers. Libya rejects any notion that the territorial dispute in this case may be decided on the basis of the misinformed views of the cartographic services of various countries of the world.

32. There are several interesting maps issued by international organizations and private oil companies that cannot be found in Chad's Map Atlas. Already mentioned above in para. 6 is the map used as an illustration in the O.A.U. Subcommittee report of 1984 (Map LR 33). It shows three lines: the 1899 line, shown as a strict southeast line, the 1919 line and the 1935 line. Then there are two maps issued by the World Bank in February and March 1960 (LR Maps 37 and 38), which provoked a French protest. This incident is discussed in Supplementary Annex, No. 6.10 (10). Finally, there are three oil company maps (LR Maps 39, 40 and 41). These maps show either the 1955 Libya map line alone or in conjunction with the 1919 line.

33. In Supplementary Annex, No. 6.10 other examples of post 1955 Treaty maps that did not conform to the French view concerning Libya's southern boundary are cited. In para. 4 of that Annex, the ICAO map is discussed. It did not show the 1919 line, and provoked a French protest and a rather stubborn ICAO response, in November 1955. A French map not conforming to the official French view was the carte TARIDE, which provoked a French reaction in 1957, for the map had a semi-official character (Supplementary Annex, No. 6.10 (7)).

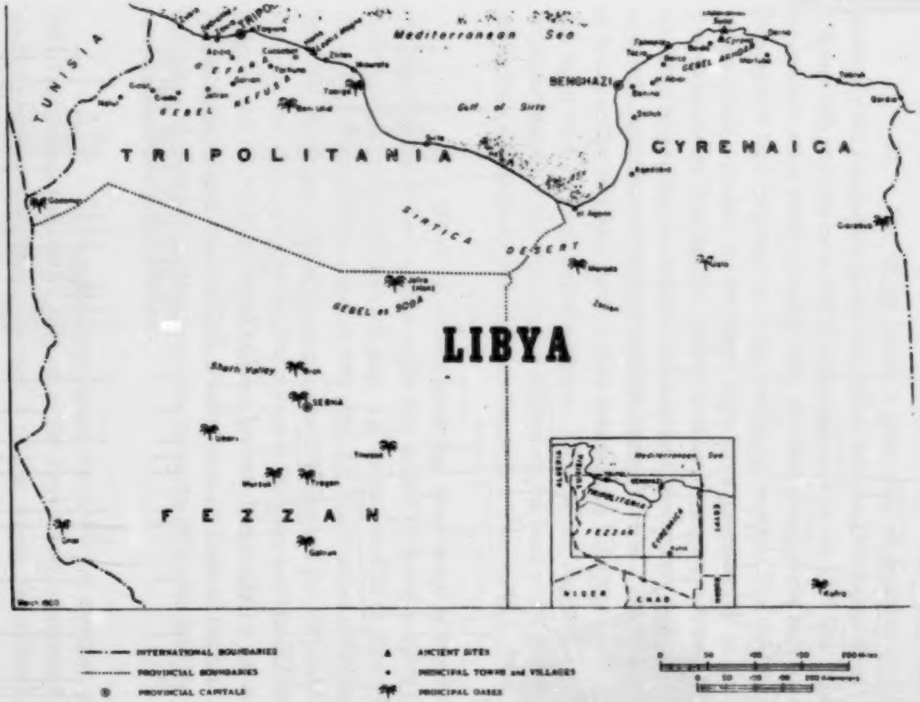
LR 37


COMPANY
DATE GRANTED
Oil concession areas
Oil producing wells

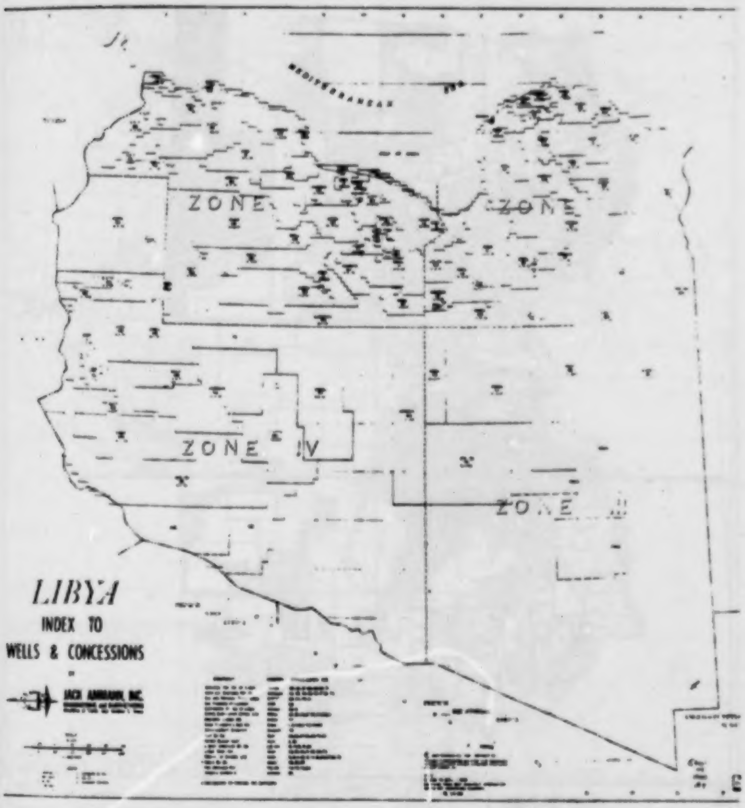
PETROLEUM CONCESSIONS
IN LIBYA

MAP SHOWS POSITION ON FEBRUARY 6, 1961

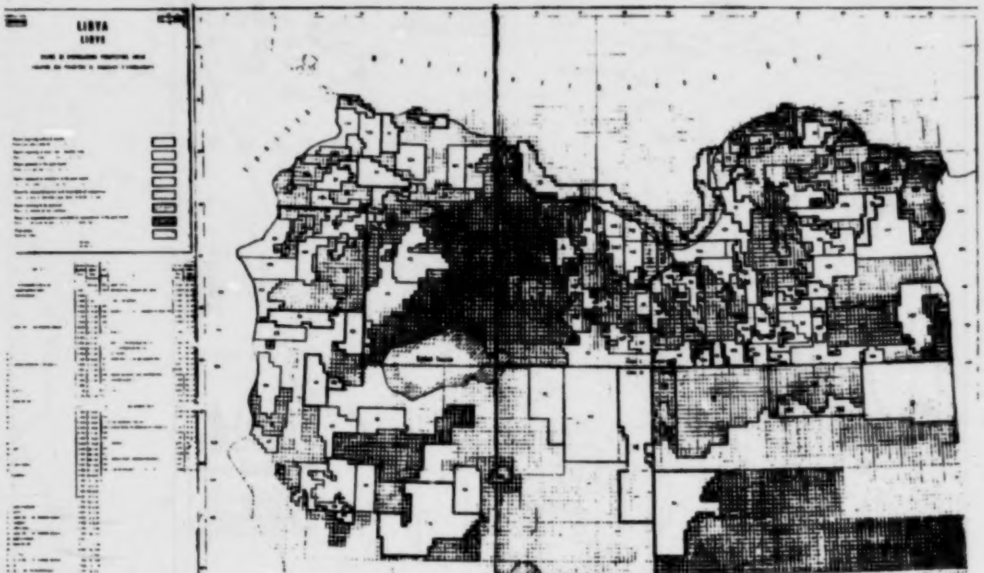
Source: The Economic Development of Libya.
Prepared for the International Bank for


TUNISIA
TRIPOLITANIA
Mediterranean Sea
GEBEL NEFUSA
Gulf of Sirte
BENGHAZI
GEBEL AKHDAR
CYRENAICA
SIRTICA DESERT
GEBEL es SODA
LIBYA
Shati Valley
SEBHA
FEZZAN
Mediterranean Sea
EGYPT
FEZZAN
NIGER
CHAD
INTERNATIONAL BOUNDARIES
PROVINCIAL BOUNDARIES
PROVINCIAL CAPITALS
ANCIENT SITES
PRINCIPAL TOWNS and VILLAGES
PRINCIPAL OASES
0 50 100 150 200 Miles
0 50 100 150 200 Kilometers

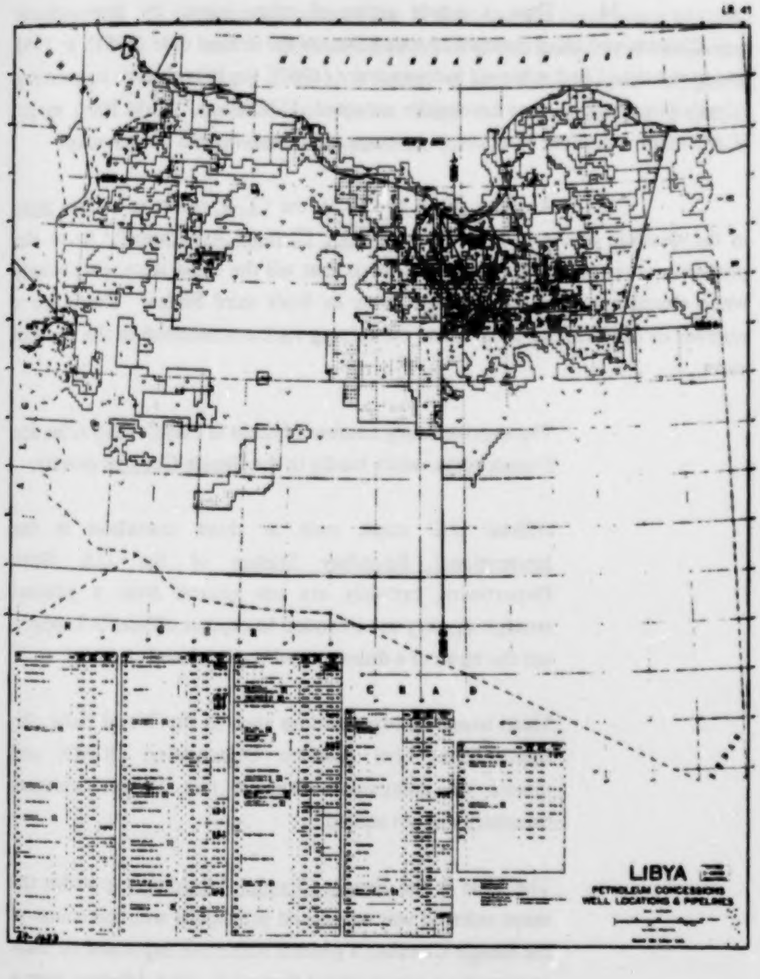
Source: The Economic Development of Libya, Prepared for the International Bank for Reconstruction and Development, by the Johns Hopkins Press, 1960


MEDITERRANEAN
ZONE
ZONE
ZONE IV
ZONE
LIBYA
INDEX TO
WELLS & CONCESSIONS
JACK AMMANN, INC.

LR 40


LIBYA
LIBYE

LR 41


MEDITERRANEAN SEA
NIGER
CHAD
LIBYA
PETROLEUM CONCESSIONS
WELL LOCATIONS & PIPELINES

34. Thus, a whole series of maps issued by international organisations and oil companies revealed that on the critical date (1951), in 1955 and at the time Chad achieved independence (1960), the French view concerning Libya's boundary was not necessarily accepted: U.N. maps, World Bank maps, ICAO maps, a number of oil company maps and a semi-official French map.

35. At paras. 10.16 and 10.54, the CC-M refers to certain dicta in the decision of the tribunal in the Beagle Channel Arbitration[11] as to the probative value of a large number of maps that tell the same story, particularly when emanating from the opposite party or from third States. There are a number of observations to be made concerning such a contention in the present case:

- The overwhelming number of maps in Chad's Map Atlas are French maps, which hardly fit the Beagle Channel criteria;

- Official U.S. maps, such as those contained in the International Boundary Studies of the U.S. State Department, certainly are not neutral from a political standpoint; they are intended to express official U.S. policy, not the views of a disinterested but informed observer;

- Maps issued by organisations such as the World Bank, the International Civil Aviation Organisation (ICAO) and private oil companies revealed that Libya's southern boundary was not settled;

- The issue in the Beagle Channel Arbitration to which the maps referred was concerned principally with the course of the Beagle Channel; a general consensus expressed on maps concerning a geographical feature is quite different from a consensus concerning the meaning and application of international agreements;

- The geographical and diplomatic resources available to most of the countries of the world are hardly a match for

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[11] Argentina-Chile Beagle Channel Arbitration, Report and Decision of the Court, 18 February 1977; reprinted in Int'l. Leg. Mat., Vol. XVII, 1978, p. 634.

those of a country like France; the fact that France has been able to convince other States to put lines on their maps that please France, is hardly a factor to be given weight in determining whether there is a conventional boundary between Libya and Chad.

No. 3

SUPPLEMENTARY ANNEX, NO. 3

THE ROLE OF THE SANUSI
IN
THE CENTRAL SAHARA

Introduction

(1.1) Chad has argued that the Sanusi Order was merely a religious order whose temporal activities were limited to erecting zawiya-s along trade routes and itself engaging in trade. Chad has also denied that the Sanusi Order exercised any form of civil or administrative authority on the populations of the Borkou-Ennedi-Tibesti region and argues that military activity only resulted from the French advance into Chad. In short, the Sanusi never succeeded in becoming a unifying force in organisational, administrative or political terms for the tribes and populations of the Borkou-Ennedi-Tibesti region (Chadian Counter Memorial 5.98-5.102).

(1.2) Whilst the Sanusi Order may have adapted its activities to respond to specific circumstances and although the Order may not have acquired all the characteristics of a State, in sociological and historical terms, and in terms of Islamic constitutional law, Chad's assertions as to the nature and the activities of the Sanusi Order are absolutely wrong. The Sanusi Order fulfilled the functions demanded of a State in terms of the three categories mentioned above and thus effectively acted as the embodiment of a State, despite the very specific conditions which obtained in the pre-colonial period in the Central Sahara, conditions which, in short, were quite unlike those in which the nature of modern states are normally evaluated. Other entities could also have provided similar functions, no doubt, but it is the degree to which the Sanusi Order maintained a monopoly of them that determines the extent to which it fulfilled the modern requirements of a State.

The Islamic concept of the State

(2.1) In early Islam, the concept of the State was quite unlike modern definitions:

> The basis of the Islamic state was ideological, not political, territorial or ethnical and the primary purpose of government was to defend and protect the faith, not the

> state...Political boundaries were unknown to Islam except those that separated the **dar al-Islam**, the area inhabited by Muslims, from the **dar al-Harb**, the abode of war inhabited by unbelievers. (Lambton 1981: 13)

(2.2) In fact, the State was concerned with a specific community - the **umma**, or "... a body of people who were the object of the divine plan of salvation and who therefore were the proper unit of political organisation... a community dedicated to the service of God according to his commandments, and to spreading the true faith...religion, therefore is necessarily inseparable from politics." (Kedourie 1992: 2). Furthermore, it was based on a voluntarist theory of conditional contractual duty and delegation. In essence, the ruler (**imam**) enjoyed power in relation to his observance of the conditions set down for legitimate government and was entitled to expect obedience from the 'umma to that degree. Delegation of power was governed by similar conditions and was legitimised by similar mechanisms. The relationship between ruler and ruled was thus essentially voluntarist in nature. It is this characteristic that underlies the subtleties of the concept of "shared sovereignty" or "mixed sovereignty" which European constitutional theory finds so difficult to accept and which Chad attempts to dismiss.

(2.3) According to Mawerdi, who established the authoritative version of Islamic constitutional theory in the late tenth century (Lambton 1981: 83-102), the basic conditions were eleven in number (Mawerdi 1982: 8, 30-32), of which the most important was to maintain the proper practice of Islam. Subsidiary duties required the **imam** to defend the **dar al-Islam**, the Muslim world; convert the pagan; maintain the proper application of **sharʿia** - Islamic religious law - and levy religiously sanctioned taxation. **Sharʿia**, as the legal corpus of Islam or the **usul al-din**, was derived from the **Qur'an** (the literal word of Allah), the **hadith** (statements attributed to the Prophet Muhammad), the **sunna** (the practices of the Prophet), **ijmaʿ** (the consensus of the **umma**), and **qiyas** (argument by analogy)(Lambton 1981: 1-12). This, then, was the normative political culture within which the Sanusi Order operated.

(2.4) The approved taxes consisted of four, in essence, although, in specific circumstances others might also be authorised. First came **kharaj**, which was levied on conquered converts to Islam, and **jiziya**, which was a poll-tax on non-Muslims within the **dar al-**

Islam who were "People of the Book" (Jews, Christians or Zoroastrians)(Gibb & Kramers 1974: 245). Then there was **zakat**, the major form of taxation and paid on property or produce at a rate of between 2.5 and 10 percent, depending on the category involved (Gibb & Kramers 1974: 654-656). On benefits gained from trade, this was charged at 2.5 per cent and on agricultural goods at up to 10 per cent. The Sanusi, interestingly enough, only levied a flat rate of 2.5 per cent (Ziadeh 1958: 117). Finally, there was **ᶜushr**, a tithe levied on land for charitable purposes (Gibb & Kramer 1974: 610-611). Not all these taxes were necessarily levied at the same time, but the fact of levying them and receiving tax receipts was considered evidence of legitimate Islamic rule on the part of the taxing authority.

(2.5) The eleventh condition related, not to the person of the **imam** but to one form of the imamate, the caliphate; the institution whereby the authority of the Prophet Muhammad was delegated to his successor(s), the **khalifah-(s)**. This was that, in addition to six personal qualities, the caliph had to be a member of the Prophet's own tribe, the Quraysh. Furthermore, the practice grew up that the office of khalifah was elective within the lineage, although this occasioned much strife between different tribal factions in the early days of Islam.

(2.6) However, since the caliphate as an institution was generally accepted to have disappeared by the beginning of the Ottoman empire - despite Ottoman claims to the contrary - the crucial institution, for our purposes, was the imamate, rather than the caliphate, since it did not involve lineage legitimisation. This was, indeed, the basis of Ottoman legitimacy and was buttressed by a theory of secular authority developed by the **falasifa** movement (Mardin 1962: 105) Nonetheless, later Ottoman sultans, particularly Abdulhamid II, attempted to revive the concept of the caliphate, and their entitlement to such a title, as a legitimising factor as part of his policy of pan-Islamism. The major reason for this was that the tradition had grown up that true Islamic government had only existed under the first four caliphs of Islam - the rightly-guided caliphs, or the **rashidun** caliphs. The Sanusi Order viewed this development with decidedly mixed feelings because it did not accept the caliphal status of the Ottoman sultan, although it was prepared to accept the authority of the Ottoman sultanate and the concept of delegation of political authority inside the Ottoman Empire.

(2.7) In fact, the issue of delegation of the authority of the **imam** requires further attention.

Delegation was both a property of the caliphate - as the delegate of the authority of the Prophet Muhammad and therefore involved a replication of the character and abilities of the Prophet himself - and a right of the **imam**, since he could not handle the responsibility of the detailed administration of a vast Muslim empire alone. The authorised characteristics of delegation formed the prerogative of the **wizir**, or minister. In addition to the concept of the delegate acting as executive - an earlier variant typified by the authority vested in the **wali** or **ᶜamal** (governor) - in which there was no freedom of action for he was bound by the instructions of the **imam**, Islamic constitutional theory, as defined by Mawerdi, allowed for the minister (**wizir**) to act as delegate.

(2.8) In the latter case, the delegate had to have all the qualities required of the **imam** and was bound by the same conditions as the **imam**, except the requirement over lineage membership inherent to the caliphate (Mawerdi 1982: 43-44). Over time, this concept of delegation came to legitimise the plethora of separate governmental institutions that grew up in the Islamic world, once the caliphate had ceased to be an effective vehicle of universal government. In any case, even in these circumstances, the concept continued to inform the generalised political culture of the region, even if the governments concerned had very little religious authority to legitimise their control of power. Indeed, Ibn Taymiyya, in the thirteenth century, argued that, with the effective collapse of the caliphate, religious unity and political unity had ceased to be identical and power could be shared by more than one ruler, provided he maintained the **sharᶜia** (Hourani 1991: 144). Both versions of the concept of delegation relate very closely to the ways in which the Sanusi Order established and retained its authority within Cyrenaica and the Central Sahara, alongside the Ottoman Empire, during the nineteenth and early twentieth centuries.

(2.9) These conditions incumbant on the **imam** or on his delegate, in the ideal Muslim State of the **dar al-Islam** inhabited by the **umma**, or on any legitimate ruler in the more fragmented world of Islam after the end of the period of the **rashidun** caliphate, formed one part of the conditional contractual relationship between **imam** and **umma** which underlay Islamic constitutional theory. In return for the conditions imposed on the **imam** being observed by him and his representatives, the **umma** (the community of Muslim believers) was obligated to accept and obey the authority of the **imam** and his delegates. This conditional contract of obedience of the community towards the **imam**, provided the **imam** abided by the conditions set down in the **sharᶜia**, was symbolised by the **bayᶜa**, a formal agreement made between the **imam** and the leadership of the community, the **ahl al-hall wa al-ᶜaqd** who were usually represented by the **ᶜulama** - those recognised to be authorities on religious matters. The concept of such a contract was originally drawn from pre-Islamic Meccan commercial practice and the name given to it, which means a "handshake", was transferred to this new constitutional practice (Gibb & Kramers 1974: 56-57).

(2.10) This new constitutional concept and practice was first demonstrated in the "Constitution of Medina", a series of undertakings the Prophet Muhammad signed with the **Muhajirun** (those who accompanied the Prophet on his emigration from Mecca to Medina, the original **hijra**), with the **'Ansar** (Muhammad's supporters in Medina) and with Jewish groups in and around the city. Indeed, in addition to creating the first example of a constitutional **bayᶜa**, the Constitution of Medina also laid down the relations between the **umma** and protected non-Islamic communities, such as the Jews, who were to be considered **dhimmi-s**, communities formally under the protection of the **umma** but whose communal rights were guaranteed by it in return for recognition of its legal control over them (**viz.** Newby 1988: 80-82).

(2.11) In fact, behind this explicit dual contract of obedience and orthodoxy lay another set of assumptions. The first was that the contract was, in fact, two contracts, both with Allah. The **imam** had a sacred obligation to ensure the proper observance of Islam and, in return, was permitted to rule. The **umma** had an obligation to obey the **imam** because of its status as the community of the believers and, as a result, had the right to evaluate the orthodoxy of the **imam**'s rule. In short, sovereign authority in the Islamic ideal was an attribute of Allah, not of positive law, and was an extension of collective religious commitment. Sovereignty, in short, had little to do with control of a specified territory but was instead a communal and voluntarist attribute which was integral to the **umma**.

(2.12) If the **imam** failed to honour his undertakings, then, in theory at least, the community had the right to remove him from office. However, as time passed, official legal opinion tended increasingly to consider that, since order was always to be preferred to anarchy, a ruler's authority had to be considered absolute, even if tyrannical, and the **ᶜulama** enjoined obedience on the **umma**, even in the face of arbitrary power (Kedourie 1992: 4-12). Nonetheless, the tradition of righteous rebellion against arbitary power remained buried in the political culture; more strongly in some areas, less so in others. It was preserved in the concept of the **mahdi**, a charismatic, millenarian leader, who would eventually emerge to lead the **umma** against injustice and restore proper Islamic rule on earth.

(2.13) Furthermore, insofar as sovereignty was not an attribute of temporal authority but, instead, a divine quality, its abuse through misuse of power could, in theory, be corrected by any pious, professing Muslim. It was on this basis that revivalist movements constantly arose inside the Islamic world, seeking to redress abuses and accusing official government systems of failing in their Islamic duty. This, of course, ran directly counter to the prohibition on rebellion developed by the **ʿulama** - "To him who holds power obedience is due" as a Moroccan jurist argued (Kedourie 1992: 9) or, as al-Ghazzali claimed, "...the tyranny of a sultan for a hundred years causes less damage than one year's tyranny exercised by the subjects against one another" (Hourani 1991: 144). But, at the same time, revolt was justified against a ruler who contravened divine command.

Islamic Order and Africa

(3.1) The ideal ideological format for revolt was, then, a call for the purification of Islamic practice and the socio-political environment, with rulers being condemned for the corruption of the Islamic ideal. In North Africa, for example, Almoravid doctrine, as developed by Ibn Tashfin, sought the revival of the caliphate (Abun Nasr 1987: 83), while, one hundred years later, the Almohades based their doctrine on Ibn Tumart's concept of the unity of Allah and of the need to rely on the original doctrines of Islam as laid down by the Prophet, not as developed by later theologians (Abun Nasr 1987: 89). Later on, as the opportunities for empire-building declined, political and religious revivalism tended to develop far removed from urban centres, often by a conscious withdrawal from urban life - thereby mirroring the practice of the Prophet, who, in the **hijra**, fled Mecca in order to sustain the pure ideals of Islam, a tendency which is replicated today by some extremist Islamicist groups, such as **Takfir wa hijra** ("repent and retreat") in Egypt - and to be organised through a religious order, a movement specifically and exclusively dedicated to the purification and revival of Islamic practice. Thus rural and particularly desert regions acquired the patina of religious revivalism.

(3.2) Although many of these orders were **sufi** orders and thereby concerned with internalised mystical revelation, the orders which have had the most significant impact on political and historical development within the Islamic world were not. In their cases, religious doctrine had a profound external and temporal relevance, in addition to its significance within the order itself. Indeed, insofar as this was the case, it was an acute reflection of the Islamic principle of din wa dawla (faith and state) which demonstrates the intimate connection between religious doctrine and political organisation and which is the means of legitimisation of Islamic society through the **imam** and the **umma**. In the absence of the **imam-khalifah**, **mahdism** - as expressed by such orders - became an acceptable political alternative.

(3.3) One of the most lasting examples of such a development was the effect of Wahabbism, the doctrinal movement which, even today, legitimises the monarchy in Saudi Arabia. The Wahabbi movement, founded in the 1740s, was based on the teachings of Ibn Taymiyya, who sought to revive the purity of the teachings of the salaf - the "ancestors" or the original Muslims - and thereby to re-create the conditions of the rashidun caliphate (Moss Evans 1981: 108-110). As part of this process, it sought to escape from the tradition of developing sharᶜia law by qiyas (reasoning by analogy) or insisting on unconditional obedience to authority (taqlid). In essence, the movement sought to revive the original but discredited tradition of ijtihad (innovative reasoning) as a means of revivifying the Islamic moral, social and political order - a desire it held in common with the Sanusi Order (Martin 1976: 107). The Wahabbi movement achieved this objective in practice by building an alliance with the al-Saᶜud family which was able to provide the necessary temporal political power required.

(3.4) The major orders of North, West and Central Africa, particularly the Sanusi Order, were, indeed, very similar, although, unlike the Wahabbi movement, they made no distinction between temporal political and religious authority or power. The Grand Sanusi, Muhammad bin ᶜAli, had studied in Fes at the Qarawyyin and in Cairo at al-Azhar before moving to Mecca where he remained for seven years. He was thus well acquainted with the mainstream of Islamic thought. The Order he created was designed to be universalist, not limited to just one region, and the first zawiya of his new Order was founded just outside Mecca. He was himself an Algerian and, although he had wished to set up the centre of his Order in Algeria, the French occupation after 1830 forced him into Cyrenaica. Thus the "externality" of the founder members of the Order in Cyrenaica had no theoretical implications, since the Order was originally intended to serve the Muslim world as a whole, was seen as such by those amongst whom it settled and, in any case, was prevented by colonial occupation from settling in the place of origin of its founder. In any case, within one generation, the leadership had become authentically Cyrenaican - whether through permanent residence or by marriage.

(3.5) Like the Wahabbis, the Grand Sanusi sought purification of Islam by a return to its original practices and by the use of **ijtihad**. However, unlike the Wahabbi movement, the new Sanusi Order did not have, nor did it need, a temporal patron in the shape of the al-Saᶜud family. On the other hand it did have very practical evidence of the threat to the Islamic world from European expansionism in the shape of France and of the basic corruption of Islamic life and belief through the experience of the Ottoman empire and the Khedivate in Egypt, two factors which spurred it into attempting to intervene in the political arena. Very similar motivations prompted the creation, towards the end of the nineteenth century, of the Order around Ma'al-Aynin in the Western Sahara, where the issue of foreign, non-Muslim (French and Spanish) conquest of part of the Islamic world was a far more important spur to organised resistance to Europe through an Islamic Order than were doctrinal issues (Martin 1976: 125-142). The Sanusi Order, therefore, developed at a time when European colonialism was beginning to make significant inroads into the Muslim world of North, Central and West Africa. It was, in consequence, acutely aware of the significance of the colonial enterprise as far as the Islamic world was concerned.

(3.6) The important point here, however, is that, in all respects, the Sanusi Order was primarily concerned over issues that related directly to Islamic political structures, which it perceived as the most appropriate way of confronting external aggression, first from France and later from Italy, as well as the most suitable form of socio-political organisation within the vast hinterland of the Libyan coast. In essence, "The Sanusi sought to achieve a simple Islamic theocratic organization of society by peaceful means."(Spencer Trimingham 1971: 119-120). Indeed, since Islam makes no distinction between religious and temporal activities, whether political or economic in nature, the Order's economic interests developed as a quite logical, if secondary, consequence of its own internal agenda, and "Thus the Senoussi gained effective political and commercial control of the whole eastern half of the Sahara." (Cabot Briggs 1960: 100).

Sanusi Organisation

(4.1) The conventional view of the organisation of the Sanusi presence in Cyrenaica and the eastern Sahara is that given by Evans-Pritchard (Evans-Pritchard 1949: 62-85; Evans-Pritchard 1945a: 61-65; Evans-Pritchard 1945b: 1983-187). His ideas have been conveniently summarised by Emrys Peters (Peters 1990: 10-23) in nine points:-

(1) There had always been a cult of the veneration of marabouts (murabtin) amongst the tribes of Cyrenaica, particularly amongst the nine dominant nomadic Saᶜadi tribes;

(2) The Sanusi Order, then, was able to gain access to them through its religious status, for Islamic tariqa-s (religious orders) were accorded a very similar status to murabtin and, where appropriate, their organised bodies of followers in rural North Africa;

(3) As aliens within the surrounding tribes, however, the Order's zawiya-s could not own resources and thus remained independent of the tribes themselves while, on the other hand, remaining equally acceptable to all the tribes;

(4) Furthermore, the zawiya-s were located at points of segmentary cleavage between tribes and tribal factions, in which positions they were subsumed into the pre-existing cult of saint and shrine worship;

(5) In addition, the bedu tribes felt a need for external and impartial authority to resolve and arbitrate disputes;

(6) The Sanusi thus acquired a monopoly of control amongst the tribes, since the Ottomans and religious orders other than the Sanusi Order, of which there were eight in Libya) were confined to coastal and urban regions because of their inability to penetrate nomadic tribal society;

(7) By the start of the twentieth century, individual zawiya-s began to acquire independent identities and to be increasingly identified with specific tribes, but;

(8) French penetration into the Sahara and then the Italian occupation of Libya reinforced unity again;

(9) The Order took on an explicitly political

status when the Italians treated its then head, Sayyid Idris, as the Libyan political representative.

(4.2) There are, however, serious objections to points (4) and (7) to (9). Emrys Peters himself points out that the actual distribution of zawiya-s does not correspond exactly with tribal cleavages. He argues that, in fact, the location of Sanusi zawiya-s is related to two other factors; first, to control of available economic resources and, second, to access to the **bedu** structure of power through local shaykh-s. Thus, from the point of view of exercise of temporal power, the Sanusi Order was primarily concerned to ensure a monopolistic economic control over the Eastern Sahara and linked that to control over the internal power structures of tribal society (Peters 1990: 23-25).

(4.3) This, in effect, it achieved by the process of being part of yet apart from tribal society and imposing its local leaders - the heads or shaykh-s of the zawiya-s as arbitrators on that society. This, in itself, was achieved by the Order's status within nomadic and transhumant society, both as **marabtin** and as the embodiment of Islamic orthodoxy. It was crucial that, for this to be possible, the Order's representatives had to be seen as peaceful and not as competitors for power with the tribal power structures themselves. Its power and strength lay precisely in the fact of its normative weakness, for it then became the essential arbitral mechanism through which tribal cohesion could be maintained. In this respect, the Sanusi Order behaved in a way that is a paradygm for religious orders in North Africa and which is typified by the thousand year-long sultanic and caliphal tradition in Morocco.

(4.4) Its purpose was to create a properly ordered Islamic society through which temporal power could be exercised on what was, in effect, a fundamentally theocratic model of society. Thus, of the three functions of each zawiya - fostering trade (the zawiya as caravanserai and suq or market); arbitrating disputes (the zawiya as source of political and social order); and proslytising Islam (the zawiya as cultural and civilisational centre), the educative and proslytising function was the most immediately significant. In the specific context of the Eastern Sahara, the Order, or rather its leadership - the Grand Sanusi, his succesors and the shaykh-s - acted as the **imam** and his delegates, whilst tribal society became, in effect, the **umma**, now forced to abide by shar^cia law, for qadi-s were appointed by the Order to the tribes (Adams 1945: 20). Tribal loyalty was still conditional on the Order maintaining its religious status and the Order's probity in Islamic terms was essential for its survival.

(4.5) In this respect, its inability to control economic resources directly became a source of strength, for it was able to impose Islamic taxation on both the tribes and the trade routes it controlled, offering in return peace and security (Cordell 1977: 28-29). Even though the tradition of the **ghazw** - tribal raiding - was not completely eliminated, it was signifcantly reduced and the Sanusiya always attempted to recover lost property, usually successfully[1]. Furthermore, this economic power became an essential component binding the Order's **zawiya-s** together. Although the primary collecting agents were the zawiya-s themselves, once they had paid for their expenses, the balance of the funds was remitted to the central **zawiya** at Jaghbub, Kufra or Qiru (Gouro). The bulk of these remitted funds went to support the Islamic university created at Jaghbub (Evans-Pritchard 1945a: 65).

(4.6) In addition to providing a cultural centre at Jaghbub - "...a remarkable civilising mission amid unpromising surroundings" (Wright 1990) - the Order also created a rudimentary administrative system for its domains, for, "...the Sanusi Order came to fill a political vacuum and its becoming a state, or even an empire, was only a natural development."(Ziadeh 1958: 119). The **shaykh-s** of the **zawiya-s** were appointed or confirmed in their posts by the Grand Sanusi or the head of the Order - a process which exactly paralleled the contemporary administrative systems of Tunisia, the Deylik and Beyliks in what is today Algeria and in the Sharifian Empire of Morocco. A special postal system was developed to enable him to keep in touch with these **shaykh-s** and at least once a year a special council of senior **shaykh-s**, the **khawwas**, met to decide policy issues and to instruct the **zawiya-s** (Zaideh 1958: 112).

(4.7) Even the **zawiya-s** themselves, although virtually autonomous units because of the vast distances that separated them from each other and from the administrative centre of the Order, had a standard structure. Alongside the **shaykh** appointed by the the head of the Order, there would often be a **qadi** (judge) also appointed by the Order. Often there were also a **muwazzin** and an **imam** to lead the prayers, as well as a **wakil** or clerk. In addition, there would be **ikhwan** ("brothers" or adherents - adepts - of the Order who were classified in four grades of competence), **muntasib-s** (affiliates of the Order) and servants. The **zawiya** would also own land donated to it by the surrounding tribe which would be **waqf** (an endowment and thereby inalienable - Gibb & Kramers 1974: 624-

628)) which would be worked by the ikhwan, while local tribesmen would contribute zakat and ʿushur, often in the form of equivalent labour. Its income would be made up from its own produce, zakat charged on trade, and contributions or donations (Zaideh 1958: 116-117). Its physical structure would comprise a mosque, a school and a guesthouse with associated yard for animals. Travellers would be granted up to three days free hospitality (Adams 1945: 19).

(4.8) This structure, although rudimentary from a European standpoint, was quite sufficient to satisfy the administrative and socio-political needs of an acephalous tribal society which, moreover, was sparse and scattered. The Sanusi Order imposed order on the tribes through its religious status and, in return received economic benefit, basically in the form of religiously sanctioned and legitimate taxation, the zakat. The tribes were brought back to greater Islamic orthodoxy, or even properly converted for the first time, as with the Zaghawa-Bideyat and the Tibu. Society was thus properly ordered for the practice of Islam and the fundamental duty of Islamic government satisfied. It is difficult to deny that, in Islamic terms at least, the Sanusi Order operated a rudimentary State over which it exercised sovereign control. Indeed, as suggested above, in many respects, Sanusi administration also satisfied modern and more general definitions of a State, for the Order protected, arbitrated, facilitated and provided social services to its clients, for the Sanusi State, like all Islamic State entities, was primarily based on the concept of communal sovereignty.

(4.9) At the same time, this pattern of interaction could differ from tribal group to tribal group and the Order did not operate as the embodiment of a rudimentary State everywhere in the Sahara. In Cyrenaica, amongst the Saʿadi tribes, this was the typical pattern. However, as the trade routes down to Wadai opened up in mid-nineteenth century (see Cordell 1977), a somewhat different relationship developed. The Sanusi were able to extend their authority down the trade routes into Wadai largely because of their relationship with two tribes, the Majabra of Jalu oasis and the Zuwaya in Kufra oasis both of which actively encouraged Sanusi participation in the operation of the trade routes. It was through this opportunity that the Order came into contact with the Tibesti, Ennedi and Borku regions and began to actively proslytise and impose control over them, as well as providing the Tibu and the Zaghawa with protection against the Awlad Sulayman of Kanem (Wright 1990: 94).

Sanusi Relations with Outside Powers

(5.1) In general terms, as part of their philosophy of **hijra** (Triaud 1987: 16), the Sanusi Order avoided direct contacts with neighbouring powers and, as part of their religious status, avoided armed conflict (Morsy 1984: 281). Indeed, the Grand Sanusi declined an offer to become **khalifah** to the Madhist State of the Sudan and another from the sultanate of Darfur at various times (Peters 1990: 26)[2]. There were, however, two major exceptions to this rule of isolation. The first was with Wadai, where the head of the Sanusi Order, Muhammad al-Mahdi, had actually met the future ruler of Wadai, Muhammad al-Sharif, in Mecca in the early 1830s. As a result, the Order was eventually given a special status in the sultanate and all the sultans from Muhammad al-Sharif onwards, until the French occupied the sultanate, were members of the Order (Cordell 1977: 30). The Order was also given exclusive charge of the Wadai caravans under Muhammad al-Sharif. These facts, together with its control of the whole of the trade route from Wadai to Benghazi, made the Order extremely powerful. It did not, however, attempt to become the dominant power within the State or to supplant the State itself, but simply accepted its status and prestige alongside the Wadaian sultanate. In this respect, its position in Wadai was quite different from its position in the Sahara itself.

(5.2) The other major exception to this rule of isolation was with the Ottoman Empire. The Ottomans had re-asserted control over Libya - then the two provinces of Tarabulus-Garb and Binghazi - in 1835, just as the Order was itself penetrating the hinterland. The Ottomans themselves were never able to penetrate effectively into Cyrenaica and extend their administration there. They therefore had to come to an uneasy understanding with the Order, creating what Evans-Pritchard called the "Turco-Sanusi Condominium" (Evans-Pritchard 1949: 98). Indeed, the relationship was, on occasion, far closer, with the Order the dominant partner. Not only were the possessions of the Order treated as **waqf** by the **firman** of the Ottoman sultan, and thereby tax-exempt, but many Ottoman officials were actually members of the Order, including, it was rumoured, at least one governor of Benghazi (Peters 1990: 68).

(5.3) Indeed, as time went by and a European threat to Ottoman possessions in Africa became more evident, the Sanusi Order and the Ottoman authorities were forced to collaborate ever more closely in order to resist this common threat. Hence, by the end of the century, the Ottomans were able to send troops down to garrison points around the Sanusi zawiya-s of

Ennedi, Borku and Tibesti and the Sanusi leader was eventually prepared to accept an Ottoman flag being flown at Kufrah and a garrison being located there too. The Ottomans also tried very hard to persuade the Sanusi leader to visit the Ottoman sultan. In 1890, the governor of Cyrenaica, Rashid Pasha, actually visited Jaghbub on such an errand and the following year, an emissary was sent direct from Istanbul to renew the invitation (Morsey 1984: 281).

(5.4) Indeed, the Ottoman administration recognised its dependence on the Order by showering it with gifts and offering it the ceremonial burnous, the symbol of delegation of authority by the Ottoman sultan - a symbol which was accepted (Istanbul Archives: Y.Mtv 51/74; 59/15; 159/117 and Y.A HUS 292/136; RES 25/14 or Trade Dahiliye 86734). These materials are annexed to Libya's Reply as Exhibit __. In this respect, the Sanusi Order was put on the same footing as the Beys of Tunis who also accepted the ceremonial burnous, and as the khedivate of Egypt. It was a status which was quite compatible, in Islamic terms, with the idea of exclusive Sanusi control over the Eastern Sahara and, through the concept of "delegation" provides an ideological and doctrinal underpinning to the idea of shared sovereignty between the Sanusi Order and the Ottoman Empire in the latter part of the nineteenth century in Libya and its southern hinterland. It also explains the basis for the letter of Sayyid Ahmad Sharif Sanusi to the major European powers, in which he expressly acknowledges Sanusi subordination to the Ottoman Empire in 1911 (Libyan Memorial; Volume 6, Exhibit 47).

(5.5) This special relationship between the Ottoman Empire and the Sanusi Order is also relevant to the Sanusi decision to confront French penetration into the Sahara[3]. It was clear that French interference and the growth of railways in West Africa would divert trade away from the Saharan trade routes. However, quite apart from economic considerations, the Sanusi Order was obliged to organise jihad against French penetration into areas it controlled as part of its constitutional duty. That issue was made more acute by the Italian invasion of Libya, where the Sanusi Order was to take a leading role in organising the resistance.

Slavery and Trade

(6.1) Slavery is not formally prohibited in Islam and war captives or persons from the dar al-harb may be enslaved although not if they are free-born Muslims (Mostyn & Hourani 1988: 168). As a result, the Sanusi did not try to prevent the slave trade across the

Sahara. However, the Order did not engage in slaving itself although it did purchase slaves to use as agricultural labourers in Kufrah and other oases. Indeed, the Order frequently purchased slaves only to free them - an action enjoined on Muslims by the Qur'an (Cordell 1977: 35). Such liberated slaves often joined the Order. In cne of the most famous examples of such a liberation and consequent conversion, the former slaves became ikhwan and returned to Wadai to convert the populations there (Wright 1990: 87).

(6.2) The many reports in consular and colonial archives of Sanusi involvement in slaving are frequently mis-directed. It was never realised by colonial reporters, apparently, that the use of the term "Sanusi" or "Senoussi" as a proper name by an individual or group did not mean that he or they were actually members of the Order or were acting on behalf of the Order, even if they were members of it'. The name was frequently adopted by individuals merely because of the prestige associated with it, without their having any real connection with the Order at all. As a result, the majority of the reports of Sanusi involvement in the slave trade are actually not indictments of the Order but simply reveal the use of the name "Sanusi" by individuals.

(6.3) In fact, slaving was an activity typical of all the different population groups in the Sahara region and the Sanusi could not alone have upheld the abolition of the institution throughout the Ottoman empire in 1857. Indeed, their reaction to it was very similar to that of colonial powers later on! Both France and Britain, despite their claims of emancipation of all slaves under their control, actually did use slaves in their colonial armies and thus exploited the institution of slavery for their own ends (Lovejoy 1983: 260-263). What European powers did do was to end the slave trade, while tolerating the indigeneous use of slaves and providing the means for manumission. As a result, slavery only ended in West Africa in the 1930s, despite European control (Lovejoy 1983: 265). The Sanusi Order can hardly be blamed if it, without the same moral imperative or the same resources, failed half-a-century earlier to eliminate Saharan slavery!

Conclusion

(7.1) In view of the information presented above, it seems difficult to deny that the Sanusi Order created a State system in the Eastern Sahara during the nineteenth century which was based on Islamic precept. Indeed, this development is hardly surprising, for, "It has often been noted that in the simpler societies, especially those with a segmentary structure, political leadership is developed through indigeneous institutions" (Peters 1990: 77-78). Even though this system was developed under pre-colonial conditions and involved relatively small populations dispersed over vast areas, the Sanusi State still approximated to most commonly accepted definitions of the modern State as well.

(7.2) Sovereign control in this State was increasingly shared between the Sanusi Order and the Ottoman empire as the century wore on and as foreign pressures threatened its survival. There was no contradiction as far as the Sanusi Order was concerned, because this fitted in with the Islamic concept of delegation. The Sanusi Order was quite prepared to acknowledge the suzereinty of the Ottoman empire over it, as symbolised in its acceptance of the ceremonial burnous, without feeling that it had lost sovereign rights in the Sahara itself. Indeed, insofar as sovereignty is a divine attribute in Islam, the recognition of Ottoman rights was simply an affirmation of the principle of delegation of powers and of shared authority.

(7.3) The fact is that, however it is described, the Sanusi Order was the focus of political power inside the Sahara throughout the nineteenth century. As such, it was bound to oppose French penetration into the area, as it was later to resist the Italian occupation of Libya. As such a focus of power, however, and as the manifestation of a political force of such multi-dimensional complexity and wide-ranging action as this, it is impossible to argue that the Eastern Sahara was a region that was terra nullius before the French conquest. The Sanusi Order, indeed, was both a symbol of "effective occupation" and the embodiment of the political and state power which had brought it about.

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1. This was certainly the view of the local representatives of the Foreign Office in 1898. Consul Justin Alvarez, who was in Binghazi, reported to London on news of plundered caravans travelling to Bornu for which the Tibu and the Rishada were held responsible. However, he added, "...as many of the Tebus are Senusi, it is hoped part of the goods will be recovered." FO 101/88 XC 9703 Consul Alvarez to the Marquess of Salisbury, Binghazi 30.12.1898.

Resistance could lead to firm action, as occurred in 1901 when a Mijabra-controlled caravan (the Mijabra were firm supporters of the Sanusi) was attacked. Its organisers complained to the Grand Sheikh,

> ...who sent forty-five or fifty of the brethren well armed in pursuit of the Tebus, with instructions to obtain restitution of the stolen property. As the Tebus declined to surrender their booty the brethren attacked and defeated them, killing twenty-five and capturing much property belonging to the Tebus, as well as the goods stolen from the Mejabra. The Grand Sheikh restored the latter to the Mejabra and the Chiefs of the Tebus subsequently coming in to Geru to make their submission, and promising to be of good behaviour in future, had their property restored to them. (FO 101/90 XC 9932 Consul Alvarez to the Marquess of Salisbury, Binghazi 03.01.1901)

2. In fact, relations with Rabah were tense and the Order seems to have decided that he should recognise its supremacy in 1898. When he refused to do this, the Order successfully prohibited all new caravans travelling to Bornu, in a telling indication of their power. FO 101/88 XC 9703 Consul Alvarez to the Marquess of Salisbury, Binghazi 12.04.1898. The defeat of Rabah by French forces at the end of 1900 led to an extension of Sanusi power, for, "...it is now reported that all Kanem has submitted to the Grand Scheykh (now at Geru) and solemnly recognized his authority, the Eulad Suleyman and Tuareks having been reconciled." (FO 101/90 XC9932 Consul Alvarez to the Marquess of Salisbury, Binghazi 21.11.1900).

3. This was certainly the contemporary opinion of the Foreign Office and the War Office, both of which also credited the Sanusi with direct political authority as sovereign rulers of territory. In a War Office analysis of the Sanusi produced in 1907 and based in this instance on prior work by a French officer, Cpte Mangin, the "country" of Borku is described as being "...administered by

the Senussiya." The report also argues that the Sanusiya were "essentially a religious and peaceful confraternity...[whose] hostility towards the French was caused by French measures." (FO 367/109 XC 9110: "Notes on the history of Senussiism and its relation to the African Possessions of Foreign Powers" Part III (1905-1907), War Office, December 1907, General Staff, page 5). Similarly, Consul Justin Alvarez in Binghazi referred to "Senusian territory" or to Sanusi country in many of his dispatches (viz. FO 101/90 XC 9932, Consul Alvarez to the Marquess of Salisbury, Binghazi, 01.10.1900; FO 101/91 XC9932, Consul Alvarez to the Marquess of Landsowne, Binghazi, 09.01.1901).

4. One observer who did realise this distinction was the indefatigueable Justin Alvarez who pointed out to the Foreign Office, in dealing with a complaint from the Anti-Slavery Society, that, "There is no Sultan of the Senusys. Senusy besides being the name of the Order is a very common Moslem name in all of North Africa and presumably in Central Africa as well." (FO 367/226 XCO 8643, Consul Alvarez to Sir Edward Grey, Binghazi, 23.02.1911).

E.G.H. Joffé

E.G.H. JOFFE

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2. I teach courses in North African politics, economics, geography and history, in the geopolitics of the Middle East and in the geography of the Middle East and North Africa at these institutions.

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4. I am also the Consultant Editor for the Middle East and North Africa for the Economist Intelligence Unit, in London.

4. I am the author of over fifty articles published in academic journals or books on aspects of the Middle East and North Africa and have concentrated on issues of sovereignty, Islamic constitutional theory and state practice in the region. I am also the co-author of three studies on the geopolitics of the Persian Gulf.

E.G.H. Joffe

No. 4

SUPPLEMENTARY ANNEX, NO. 4

THE DIRECTION OF THE SOUTHEAST LINE UNDER ARTICLE 3 OF THE 1899 DECLARATION

This note (referred to in Vol. 1 at para. 6.14) is intended to fill in certain details that show how Chad has overlooked and misunderstood certain documents and, therefore, incorrectly analyses the travaux that bear on the intended direction of this line (see, CC-M, paras. 8.93-8.101). The documents referred to, which have already been placed in evidence by either Libya or Chad, are annexed here for ease of reference.

Since Libya's Counter-Memorial, in rebuttal of the CM, has discussed and illustrated this question in detail (see, LC-M, paras. 4.18-4.49, and Maps LC-M 14A, 14B, 16, 17, 18A, 18B, 18C, 18D and 19), it is necessary here only to point out some additional errors that appear in the CC-M.

As para. 6.13, Vol. 1, demonstrates, the CC-M is wrong - misquoting the LM in this respect - in stating that the line of 15°N latitude first made its appearance in a British draft of 19 March 1899[1]. The line 15°N appears as early as 16 February in a French draft tabled by M. Cambon. Aside from the CM's confusion over the various British drafts dated 19 March 1899, several of which were not tabled (and are plainly marked "not used"), a matter dealt with in the LC-M (see para. 4.30, et seq.), the CC-M compounds the confusion in its analysis in paragraph 8.95.

Chad relies on a document, furnished as CC-M, Annex 2, which is a British draft of 19 March 1899 with the words "not used" written across the top. On this draft, the end point of the boundary described in Article 2 was to be extended north to 18°N latitude (the figure 18° is placed under 14°20', which is scratched out). Chad maintains that the words "not used" imply Lord Salisbury's abandonment of 18°N latitude[2]. But this cannot be, because on 19 March another draft was tabled by the British, on which 18° reappeared.

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[1] This same mistake was made in the CM, (see, LC-M para. 4.32).

Libya has annexed here to this note two more legible copies, taken from different Foreign Office files, of CC-M Annex 2, the 19 March draft "not used" - as well as two copies of the 19 March draft that was used[3]. A comparison of the two drafts reveals that a number of important changes had been made in the draft that was used. As to the end point of the Article 2 line, instead of 18° being substituted for a crossed-out 14°20', 15° was substituted for a crossed-out 18°.

It is apparent, therefore, that the end point of 18° in the "not used" draft was not abandoned at all by Lord Salisbury, for it reappears in the new draft that was used and that contained other important changes. (In fact, an earlier "not used" British draft of 18 March had also pushed the Article 2 ending point up to 18°N[4].) The figure 18°N was then scratched out by the British - and 15° substituted therefore - after M. Cambon strongly objected to "pushing" the line that far north[5]. The draft actually tabled appears in one of the Foreign Office files together with a note of Lord Sanderson, which says: "Draft given privately by his Lordship to M. Cambon March 19." This reveals, incidently, Lord Sanderson's close involvement in the negotiations[6].

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[2] See, CC-M, para. 8.95 (4).

[3] CC-M, Annex 2, is from the file FO 97/561, 183008; the copies annexed to this note are from the files FO 97/561, XC/A56521 (first page only) and FO 97/561, 175783. The copies of the 19 March draft that was used are from the same two files as the "not used" drafts annexed here.

[4] See, LC-M, para. 4.27.

[5] See, LM, para. 5.36, and LC-M, para. 4.27.

The fact that the substitution of 15° for 18° was M. Cambon's idea, not Lord Salisbury's, can be seen from these facts:

- In a 16 February draft, M. Cambon had already suggested 15°N as the end point of the Article 2 sector;
- M. Cambon's 20 March dispatch to Foreign Minister Delcassé, setting out the latest draft - the manuscript version of which appears as CM, production 3, contains the figure 15° with 18° shown on the margin indicating a "surcharge" or substitution of 15° for 18° (according to Chad); in this dispatch, M. Cambon reported that Lord Salisbury had "accepted" this draft, implying that he had receded from his earlier position of 18°;
- At the end of the day, the end point of the Article 2 sector was fixed by the parties at 15°N; the entire discussion during 15-20 March over 18°N versus 15°N concerned the end point of the Article 2 boundary not the starting point (and when directions were reversed, the end point) of the Article 3 northwest/southeast line; and it was obvious that the Article 2 and Article 3 sections were intended to meet;

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[6] See, para. 6.21 et seq., Vol. 1, of this Reply.

- M. Cambon's concern was with "pushing" the boundary too far north, and it was only Article 2 that concerned a boundary between British and French territory.

The failure of Chad to understand the logic of this result - fixing the end point of the Article 2 at 15°N and ending the southeast line under Article 3 just north of there - stems from a failure to have examined the 1899-vintage maps that were in front of Lord Salisbury and M. Cambon. This has been fully explained in the LC-M, as cited earlier.

No. 5

SUPPLEMENTARY ANNEX, NO. 5

THE "MOCK WAR" BETWEEN THE ITALIAN MINISTRIES OF COLONIES AND OF FOREIGN AFFAIRS; THE ITALIAN SCHOOL MAP ATLAS INCIDENT

Introduction

This note is accompanied by the key documents relating to these subjects; it has been prepared to supplement para. 6.196, Vol. 1, and to demonstrate by reference to these documents that there was no basic difference between the two Ministries relating to Libya's southern frontier and that the "mock war" is a figment of the imagination of those preparing the CC-M.

At CC-M, para. 7.49, it is claimed that between 1924 and 1932:

> "... on assiste à un bras de fer entre les milieux colonialistes italiens, avec pour porte-parole le Ministère des Colonies, et le Ministère des Affaires Etrangères."

It is further contended that the Ministry of Colonies insisted on attacking the French theories concerning the southern boundary of Libya by relying on Italy's Ottoman heritage, and that the Ministry of Foreign Affairs rejected this position. The documents on which Chad relies in advancing this argument will be examined here, demonstrating that this "mock war" is a phoney war.

In rebutting Chad's pleadings here, Libya does not admit the relevance to the present dispute of the Italian documents that are analysed below. The views expressed in these various exchanges between the Ministries of the Italian Government are not binding on Libya. Under Article 3 of the 1955 Treaty, Libya is not handicapped in any way in presenting its own views as to the meaning of the various "actes internationaux en vigueur" on the critical date. Certainly no boundary opposable to Italy came into existence because of these inter-ministerial exchanges. Moreover, Italy's official maps up until the outbreak of World War II consistently showed no Libyan southern boundary. It is apparent that one of the objects of Chad's false "mock war" between the two Italian Ministries is to attempt to discredit these maps on the grounds that they represented the viewpoint of the Ministry of Colonies, allegedly overruled by the Foreign Ministry in the "mock war".

Not only is there no substance to the contention that there was a bitter and basic disagreement between these Ministries but also the assumption that all the official Italian maps were issued by, or represented the view of, the Italian Ministry of Colonies is wrong. For example, the 1941 official Italian map (Map LR 16D referred to in para. 6.118, Vol. 1) was issued by the Ministry of Foreign Affairs; and the incident over the Italian School Map Atlas, dealt with in paras. 6.119 and 6.202, Vol. 1 (and in 5.10 below), brings out clearly that it was the common view of both Ministries in 1930 that there was no conventional southern boundary of Libya.

All the documents discussed here are appended to the brief explanatory comments concerning them. These documents, which are listed below and which have already been filed with the Court, include either an English or French translation together with the original Italian[1]:

5.1 Telegram from Ministry of Colonies to Ministry of Foreign Affairs, 17 April 1924 (CC-M, Annex 60).

5.2 Note from Ministry of Colonies to Ministry of Foreign Affairs, 18 July 1924 (CC-M, Annex 61).

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[1] For other related documents not previously introduced by either Libya or Chad, see Exhibit 15, Vol. 3.

5.3 Note from Minister of Foreign Affairs to Minister of Colonies, 4 August 1924 and minutes of the 5th inter - Ministerial Meeting referred to therein (LR Exhibit 15).

5.4 Mussolini - Beaumarchais Meetings 1928-1929 as recorded by Ambassador Beaumarchais (CC-M, Annex 63).

5.5 Dispatch from Minister of Foreign Affairs to Italian Ambassador in Paris, 4 March 1930 (CM, Annex 117).

5.6 Note from Italian Ambassador in Paris to Ministry of Foreign Affairs, 6 March 1930 (CC-M, Annex 64).

5.7 Note from Italian Ministry of Colonies to Ministry of Foreign Affairs, 3 April 1930 (CC-M, Annex 65).

5.8 Telegram from Italian Minister of Foreign Affairs to Italian Embassy in Paris, 18 April 1930 (CC-M, Annex 66).

5.9 Meeting at Palazzo Chigi, 16 July 1930 (CC-M, Annex 68).

5.10 Documents relating to the School Map Atlas Incident (1930-1931):

- Aide-Mémoire, French Embassy in Rome, 12 December 1930. (LM, Italian Archives Annex, p. 93).
- Italian Ministry of Foreign Affairs to Ministry of Colonies, 22 December 1930. (LM, ibid., p. 94).
- Ministry of Colonies to Ministry of Foreign Affairs, 7 January 1931. (LM, ibid., p. 97).
- Ministry of Foreign Affairs to Ministry of National Education, 17 January 1931. (LM, ibid., p. 99).
- Ministry of National Education to Ministry of Foreign Affairs, 21 January 1931. (LM, ibid., p. 101).
- Ministry of National Education to Ministry of Foreign Affairs, 23 October 1931. (LM, ibid., p. 103).
- Ministry of Foreign Affairs to Ministry of National Education, 29 October 1931. (LM, ibid., p. 106).
- Ministry of Foreign Affairs to Ministry of Colonies, 29 October 1931. (LM, ibid., p. 108).

5.11 Letter of Comm. Guariglia to Italian Embassy in Paris, 12 May 1932 (CC-M, Annex 71).

5.1 TELEGRAM FROM MINISTRY OF COLONIES TO MINISTRY OF FOREIGN AFFAIRS, 17 APRIL 1924 (CC-M, ANNEX 60)

AND

5.2 NOTE FROM MINISTRY OF COLONIES TO MINISTRY OF FOREIGN AFFAIRS, 18 JULY 1924 (CC-M, ANNEX 61)

The first document is a dispatch of 17 April 1924 from the Ministry of Colonies to the Ministry of Foreign Affairs. It recommends Italy's reliance on the 1899 Declaration in Italy's exchanges with Great Britain and France protesting the 1919 Convention. This reflected the Italian position in its initial protests of 12 and 18 December 1922 to France and Great Britain[1]. It also reflected the Italian position in its notes of 28 February and 27 March 1924 following the 1924 Anglo-French Protocol demarcating the north/south line of Article 2 of the 1899 Declaration as far north as 19° 30' N latitude[2].

In the second document attached hereto dated 18 July 1924, however, the Ministry of Colonies raises the question of possibly broadening Italy's position to include legal rights derived from the Ottoman occupation of the borderlands confirming Ottoman sovereignty there. The Ministry of Colonies advances this idea in a rather gingerly fashion, recognising that it might inspire France -

> "... in the meantime to take further action to consolidate further its dominion in regions where up until now its authority has been exercised through far-flung and insubstantial links."

Without citing any documentary evidence, the CC-M says that this proposal went no further because the Ministry of Foreign Affairs "ne changea pas d'avis". But what that viewpoint was is left unstated. As will be seen in other documents discussed below Chad has reversed the actual story. The point of view expressed in Italy's formal protests in 1921 and 1924, which were based on the 1899 Declaration, had been drafted by the Ministry of Colonies.

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[1] See, LM, para. 5.191, et seq. The basic inconsistency in France's reply to Italy of 7 February 1923 is carefully explained in LM, para. 5.210. See, also, 5.9 below.

[2] See, LM, paras. 5.215-5.217.

In any event, the Minister of Colonies took no formal position at all in his dispatch of 18 July 1924 (5.2); he merely made a suggestion. It must also be remembered that in 1924, after the Anglo-French demarcation, Italy was faced with a fait accompli: the British and French had demarcated a boundary north to 19° 30', even though it was a boundary inter se, not opposable to Italy.

So these two documents show no disunity between the two Ministries at all.

TRANSLATION

FROM: MINISTRY FOR THE COLONIES
Northern Africa
OFFICE I

TO: MINISTRY OF FOREIGN AFFAIRS
(Europe and the East)

Telegram No. 8123 *sent express* 17 April 1924

ROME

(Text) **ANGLO-FRENCH CONVENTION OF 8/9/1919**

I acknowledge receipt of telegram No. 10626/229 of 8 April from your Ministry and am waiting to see the text of the reply from the French Government to your note submitted to them by our Ambassador. As for the reply from the Foreign Office, I feel that it does not in fact prejudice the merits of the matter as it is limited to acknowledging receipt of our protest and this does not therefore bar the way to further moves and discussions on the subject.

I would therefore be glad to know what your Ministry feels in this connection, and whether it considers it opportune, as I believe, that further pressure should be brought to obtain a more explicit and reassuring reply indicating that we are right in considering as valid, with regard to the southern frontiers of Libya, only the Convention of 1899; and consequently to act in full freedom within the limits imposed by it.

Your Ministry should make every effort to ensure, if our Ambassador in London should not limit himself to asking the Foreign Office for some further explanation; in order to clarify and define the British Government's views and attitude on this point.

TRANSLATION

Rome, 18 July 1924

Ministry for the Colonies

CONFIDENTIAL

Additional Anglo-French
Convention of 8 September 1919
and subsequent developments.
The Libyan hinterland.

Our Ministry has examined the text of the Anglo-French declaration of 21 January 1924, published in the French Official Journal of 27 February last, concerning the delimitation on the ground of the frontier between French Equatorial Africa and the Anglo-Egyptian Sudan. Nothing need be added to what has already abundantly been stated to indicate that this new declaration profoundly alters the status quo established in the Tripolitanian hinterland by the Anglo-French additional declaration of 21 March 1899. Rather, it is clear that the new declaration confirms the validity of our theory and of the arguments adduced to support it, and offers us a new opportunity to repeat them firmly.

In fact, both in the declaration and in the protocol signed by the delegates of the two governments accompanying it, it is explicitly stated that the delimitation agreed between the two governments is a delimitation on the ground of the border line dividing the respective possessions, and no denial will therefore in future be possible.

The delimitation commences from the point where the three frontiers join as it were (French Equatorial Africa - Belgian Congo - Anglo-Egyptian Sudan) up to the point where the parallel 10°38'59" (sic: 19°38'59") intersects the meridian 23°59'49" i.e. up to a point located in a zone which, as can easily be seen from the map, remains outside the sphere of French influence.

The above therefore confirms the following:

1°) The new convention is essentially of a territorial nature, unlike the convention of 1899 which tended towards a demarcation of the spheres of influence; this therefore alters the territorial status quo of the Libyan hinterland.

2°) The new state of affairs, as it now stands, means territorial aggrandisement on the part of France, and this territorial aggrandisement is to the prejudice of Libya, as we shall briefly consider.

As to the first point, I think it worth briefly summarising the arguments that demonstrate the non-territorial character of the Anglo-French Convention of 1899. This Convention as we know, resulted from a need to eliminate the conflict of influence in central Africa which, following the Fachoda incident, put European peace in jeopardy. All the diplomatic precedents go to show that the demarcation line established in this way settled the territorial rights that third parties might have within the zone covered by the Convention.

This is especially clear, as far as France is concerned from the declaration by Delcassé to the Ottoman Ambassador - communicated to the Italian Government on 23 April 1899 - as it recognised an interest on our part as from then which in no way made any changes to the detriment of Turkey in its possessions in northern Africa. It is clear, as far as Britain is concerned, even more explicitly from the statements made at that time by the British Ambassador to our Minister of Foreign Affairs in Rome and by the Foreign Office to our Ambassador in London, the effects of which can be seen in the diplomatic correspondence of the time.

With regard to France, therefore, the special character of the Anglo-French Convention of 1899 is confirmed by the Franco-Italian Agreements of 1900-1902, as they result from the diplomatic documents submitted to the Chamber of Deputies during the 1919-20 Session by Mr. Scialoia (see my previous report of 24 January last, No. 1800).

With regard to the second point, a simple glance at any map of the area clearly shows that France has trespassed beyond the line which, in accordance with the assurances given at the time under the Franco-Italian agreements, was to constitute the maximum limit of French expansion. This line divided the sphere of French influence from the British sphere, but Britain never considered the territories lying to the east of this line as forming part of the Anglo-Egyptian Sudan. It never, for example, claimed any rights to Koufra and expressly said so. "In coming to an agreement with France", wrote Lord Salisbury "we had no other aim than to prevent this power from advancing beyond the set limits. The Agreement says nothing else, and recognises no other rights". Letter from Our Ambassador in London of 11 April 1899, No. 314/134 to the Ministry of Foreign Affairs.

An extension of French possessions to the regions of Ounianga and the Erdi, i.e. regions that indisputably form part of Tripolitania and located to the east of the old demarcation line, is therefore a territorial expansion which proves to be prejudicial to Libya. In my previous report of 24 January mentioned above I stressed the reasons why these regions had a practical value. In addition, there is the other most important reason from the political aspect, i.e. the need not to abandon any rights to which we might have recourse in our attempt to reconstitute the former Tripolitanian hinterland.

This - it is true - presupposes a problem of force and strength which we do not know whether or when we can muster. It is enough for us at present not to compromise diplomatically any situations which might act to our advantage should events and circumstances prove favourable.

There is more. One question that may now arise, which I would ask your Ministry to look at carefully, is whether the formula accepted by us in the Prinetti-Barrère exchange of letters on 1 November 1902 (... par limite de l'expansion française ... on entend bien la frontière indiquée par la carte annexé à la déclaration du 21 mars 1899), implies a waiver on our part of those sovereign rights that Turkey effectively exercised over the territories lying within the French zone of influence. We know, in fact, that up to the abandonment of Tripolitania following the Treaty of Ouchy, i.e. up to 1912, Turkey had garrisoned in Tibesti: Bardài, Zouàr and Ul: and in Borku: 'Ain Galàcca, Uùn, Uàita, Bàghi and Um Sciaalùba. Many of the instruments whereby Turkish sovereignty was confirmed in these two regions were drawn up after 1899. It is also a fact that the various occupations then undertaken by Turkey never led to any objections or protests on the part of the French Government. Consequently, the documents that this Ministry is in the course of producing show that there were official relations between the Ottoman authorities in these territories and the French authorities in neighbouring areas, and how the effective occupation by France occurred only after the Turks had departed.

From all this, therefore, we may perhaps draw arguments with some legal basis to maintain that Italy's territorial rights to these regions have remained intact notwithstanding the various international treaties, and our adhesion to them; and these may well be facts to put forward when after occupying the Fezzan, Italy might be faced with the problem of reconnecting Tripolitania with the Sudan; this problem is of some practical and political importance and its technical achievement seems to be coming ever closer with the continued progress achieved in the field of exploration and communications in the Sahara.

I shall limit myself therefore to posing the problem, which is certainly worth further negotiation, as I am well aware of its weaker aspects, though I recognise that it should not be put forward at the present time in the form of a protest against the Anglo-French declaration of 21 January 1924, both so as not to cause alarm with a question that we are not ready to follow up to the bitter end, and to prevent this premature manifestation of our aspirations from compelling France in the meantime to take further action to consolidate further its dominion in regions where up until now its authority has been exercised through far-flung and insubstantial links.

Turning instead to the point we are especially interested in today, I would ask your Ministry to consider whether the opportunity should be taken following publication of the new Anglo-French agreement to repeat our attitude and to re-affirm our entitlement to consider as non-existent as far as we are concerned the 1919 Convention and its subsequent developments. To this purpose, we may perhaps put forward the considerations set out above.

(SIGNATURE)

5.3 NOTE FROM MINISTER OF FOREIGN AFFAIRS TO MINISTER OF COLONIES, 4 AUGUST 1924 AND MINUTES OF THE 5TH INTER-MINISTERIAL MEETING REFERRED TO THEREIN

The first document is a dispatch from the Ministry of Foreign Affairs to the Colonial Ministry of 4 August 1924. The second document consists of the minutes of a subsequent inter-Ministerial Committee meeting mentioned in the 4 August dispatch. These documents are introduced for the first time here and, accordingly, are filed formally as an Exhibit to Libya's Reply[1].

The dispatch discusses the British and French responses to the 1924 Italian protests, which followed the 1924 demarcation. It sees in the French response a loophole through which to seek reparation for the damage caused Italian interests by the 1919 Convention, for France's dispatch ended with this remark:

> "... si une atteinte quelconque a été portée aux droits de l'Italie, le Gouvernement de la République s'empressera de réparer le préjudice causé."

At the forthcoming inter-Ministerial Committee meeting, to be chaired by the Ministry of Colonies, the Foreign Minister suggests that the question of the best course of action for Italy to take in responding to France should be the focus of the discussion.

Comment: *There is not a trace of disagreement here between the two Ministries. A joint committee had been formed for the purpose of formulating Italian policy.*

The minutes of the 5th session of the inter-Ministerial committee meeting show that it was jointly concluded that the 1899 Declaration line was intended to

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[1] See, Exhibit 15, Vol. 3, for copies of the related documents in original Italian with English translation.

The minutes of the 5th session of the inter-Ministerial committee meeting show that it was jointly concluded that the 1899 Declaration line was intended to be a strict southeast line and that the 1919 Convention had modified that line to the detriment of Italian interests in the region. The Italian claims to this territory were explicitly tied here to the Ottoman claims: the minutes state that, when Tripolitania was in Ottoman hands and Italy only had aspirations there, France nevertheless had found it necessary to reach an agreement with Italy (a reference to the 1900-1902 Accords). Now that Libya had become an Italian colony, France ignored Italy and maintained that a change of the line affecting some 180,000 km^2 of territory and interrupting all connections between Koufra and the northern edge of Sudan only "élargit légèrement la zone d'influence française".

The minutes also point out that, unlike the 1899 Declaration, the 1919 Convention, followed by the 1924 demarcation, concerned a boundary delimitation and hence has a totally different character than the earlier Declaration. The question was asked how, in the circumstances, the British could maintain that the 1919 Convention had only a "negative character".

The minutes concluded that the 1919 Convention had seriously altered the status quo created by the 1919 Convention without Italy having been notified in advance. Therefore, Italy was justified in refusing to acknowledge the existence of the 1919 Convention so far as it affected Italy's rights.

The minutes reveal not the slightest discord between the two Italian Ministries.

TRANSLATION

From: Ministry of Foreign Affairs
To : Colonial Ministry - North Africa Section
No. 204454 or 264454

4 August 1924

Subject: **Anglo-French Convention of 8 September 1919**

Reference: My previous telegram No. 13586/269, of 1 May, and Y.E.'s note No. 15307, dated 16 July

I am sending Y.E. copies of two memos dated 23 June, from H.M. Ambassadors in Paris and London, with the attached letters which had been sent by the French and British Governments, in response to our latest complaint about the Anglo-French Convention of 8 September 1919 concerning the delimitation of the boundaries between the English and French possessions in the South of Libya.

The British note, which came in response to our reminder, asking for a clarification and precision of the British Government's point of view on the issue (see enclosed copy of the memo from H.M. Ambassador in London), merely and simply confirms Lord Curzon's note of 5 February 1923. On the other hand, the French note continues to refute our assertion, in a more detailed manner, and concludes by asking us to recognize that the boundaries of French Sudan, between the Tropic of Cancer and 19°30' N, have been permanently fixed by the straight line which runs from the point where the Tropic of Cancer and 16° E meet at the intersection point of 16° E and 19°30' N.

The French Government's assertions that the Convention of 8 September 1919 is merely an interpretation of the London Declaration of 1899 are essentially those contained in the previous notes of that Government. But, apart from a theoretical discussion about the rights arising for us from the 1899 Declaration and the 1900-1902 Accords (Visconti Venosta-Barrère/Prinetti-Barrère), the French note contained a rebuttal to our assertion that the area of French influence in the region has expanded mostly at the expense of the Anglo-Egyptian Sudan. And that, contrary to what we sustained, the interpretation given by the Convention of 8 September 1919 corresponds very closely to the provisional boundary shown on the 1899 map, and that it is not question of an increase in territory of 180.000 km^2 but of a few hundred km^2 at most.

In our opinion, it would seem useful, from a practical point of view, to clarify and ascertain the actual degree of damage inflicted upon us as a result of the so-called 'interpretation' of the 1899 Declaration, done, as affirmed by the French and British Governments, by the Convention of 8 September 1919. If, as cartographical studies undertaken by your Ministry have shown, the damage is substantial, then we will be able to base our claim for reparation on the phrase contained in the recent French note, which states: "...Si une atteinte quelconque a été portée aux droits de l'Italie, le Gouvernement de la République s'empressera de réparer le préjudice causé."

In any event, I think that the question of what should form the basis of our right to defend the territorial status quo of the Libyan hinterland, and what is our best course of action in order to effectively and finally safeguard our interests, should form the subject of our next inter-ministerial Committee meeting. This meeting which Y.E. will chair, will provide a useful opportunity for an exchange of views, that will help to form the basis of our future diplomatic strategy.

TRANSLATION

MINUTES - 5th Session

Subject: **ANGLO-FRENCH CONVENTION OF 8 SEPTEMBER 1919**
(Libyan Hinterland)

PRINCIPAL BASIS OF THE ITALIAN CLAIMS ARGUING THAT THE ANGLO-FRENCH CONVENTION OF 8 SEPTEMBER 1919 MODIFIES THE STATUS QUO BROUGHT ABOUT BY THE PREVIOUS ANGLO-FRENCH DECLARATION OF 1899, IN OPPOSITION TO THE ARGUMENTS WITH WHICH THE BRITISH AND FRENCH GOVERNMENTS TRIED TO JUSTIFY THE AFOREMENTIONED CONVENTION IN AS FAR AS IT CONCERNS ITALY.

Apart from technical and cartographical observations, it is important to point out that there are no grounds for the French Government's claim, that the line shown on the map attached to the Declaration of 21 March 1899 is a dotted line, since the intention was to indicate its non-definitive character. There is no evidence that the French and British Governments had any right to alter the said boundary at their whim. Especially when an imprecise graphic reproduction is backed up by the extremely precise wording contained in the declaration itself: wording which clearly specifies not any South-East direction, but the South-East line, beginning from the Tropic of Cancer 16° E intersection, and ending at the point with 24° E.O.G.

Given that the French Government had felt it necessary to reach an agreement with the Italian Government over the said line, at a time when Tripolitania was still in Turkish hands and constituted no more than an aspiration for Italy, then there is all the more reason that it should have sought an analogous entente at a time when Libya had become an Italian colony. The French Government had even gone as far as to declare that the 1919 Convention, in its words: "... élargit légèrement la zone d'influence française...". As it happens, this "slight extension" is in order of about 180,000 km^2, and has the effect of interrupting all communications between Koufra and the northern edge of Sudan.

As the French have claimed, it is true that the extension of their territory would occur more at the expense of Anglo-Egyptian Sudan than to the detriment of Libya or its hinterland. However, this argument cannot be used by the Government of Paris against the Government of Rome, because in 1900 the former declared to the latter that the line drawn in the 1899 Declaration: "... marque la sphère d'influence française par rapport à la Tripolitaine-Cyrénaique, une limite que le Gouvernement de la République n'a pas l'intention de dépasser."

Similarly, the British Government could not use this argument against the Italian Government, at least not until the issue of the western boundaries of Cyrenaica was resolved.

It should not be difficult to disprove the Anglo-French claim that the 1919 Convention did not modify the provisions of the 1899 Declaration, when one considers that the 1899 Declaration constituted a division between spheres of influence, on unoccupied and partly unexplored regions. Subsequently, Darfour was occupied by the British, whilst the French took Dar Sila and sent Colonel Tihlo to explore the regions of Borkou and Tibesti. Therefore, the 1919 Convention represents an actual boundary delimitation between permanently occupied territories. The conventional delimitation was then followed by demarcation on the ground. How can one claim, therefore, that the 1919 Convention is in the same spirit as the 1899 Declaration ? And how is it possible to sustain, as the British Government attempted to do, that this Convention has a purely negative character ?

In conclusion, the 1919 Convention seriously alters the statu quo created by the 1899 Declaration, without Italy having been notified in advance - a matter of courtesy towards a neighbouring state, whose interests are at stake. Hence Italy's well-founded right to refuse to acknowledge the existence of the 1919 Convention as far as it affects her, and her rights to expect no change in her respect of status quo resulting from the Anglo-French Declaration of 21 March 1899.

5.5 DISPATCH FROM MINISTER OF FOREIGN AFFAIRS TO ITALIAN AMBASSADOR IN PARIS, 4 MARCH 1930 (C-M, ANNEX 117)

This "personal" dispatch of 4 March 1930 from Italy's Foreign Ministry, African Department (Guariglia) to the Italian Ambassador in Paris (Manzoni) was sent the day after Signor Manzoni's note verbale of 3 March informing the French Government that Italian troops had occupied the region of Toummo and warning of possible contacts between French and Italian troops[1]. In this note, Italy had made it clear that it considered no conventional boundary to exist east of Toummo (as Italy's official maps clearly indicated by leaving a blank east of Toummo all the way to Sudan)[2]. France immediately (on 5 March) took issue with this view (relying on its newly-developed 1899-1902-1919 thesis). The 3 March note was not, strictly speaking, a protest "à l'occasion de l'occupation française du Tibesti, en 1929-30"[3], although shortly thereafter Italy did protest these French military incursions into Tibesti and north of a strict southeast line.

Comment: *Chad makes an important admission here: that French occupation of Tibesti started only in 1929-1930. As the LC-M has also shown in Part V, Chapter II, this French occupation was purely military and anything but peaceful.*

These events were taking place against a back drop of French military advances northward and Italian advances southward toward a boundary that had not been delimited and over which Italy and France were actively negotiating.

In his personal dispatch to Paris, Comm. Guariglia brings up the question of how to deal with France's apparent intention to occupy Bardaï, Wour and Sherda in Tibesti. (This again confirms the fact that the French occupation of

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[1] See, LM, para. 5.269, et seq.

[2] Ibid.

[3] CC-M, para. 7.54.

Tibesti only began in early 1930.) He sets out the views of Colonial Minister De Bono - what the CC-M describes as the renewal of the Colonial Minister's "attaque":

- French sovereignty over Tibesti must be strongly contested by Italy;

- There had been no delimination as yet in this region of Libya's hinterland;

- The Ottomans had stationed permanent garrisons at Bardaï and Wour, and the region of Tibesti had been administered by a Kamaïkam centered in Bardaï;

- France had offered northern Tibesti to Italy in the 1919 Versailles negotiations.

Signor Guariglia says to Ambassador Manzoni that he had already pointed out the difficulties in following this approach to his colleague De Bono. The gist of Guariglia's comments was that at the diplomatic level in protesting the 1919 Convention the line Italy had advanced in interpreting the 1899 Declaration - on which these protests in 1921 and 1924 had been based - was a strict southeast line under Article 3 of the 1899 Declaration. He referred Ambassador Manzoni to a green line on an official Italian map, which is reproduced here (Map LR 42)[4].

Signor Guariglia's dispatch refers to the De Bono comments as being inopportune ("non è il caso di dire che") to make at the time to the French. The Ministry of Colonies' suggestions were inopportune because of the way in which

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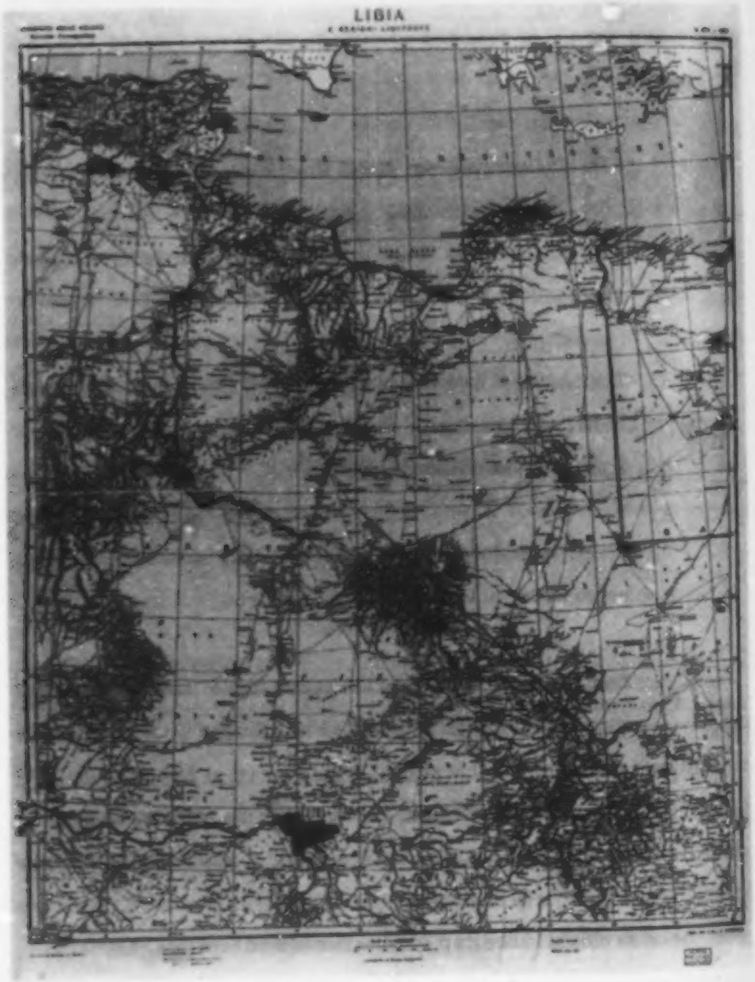
[4] This is the official 1926 Italian map which served as the basis for the various 1930 Italian programs depicted in LM, Maps nos. 70, 71 and 72.

LR 42



the Ministry of Colonies had interpreted the 1902 Accord in the "notes it made us write to France in December 1921 and March 1924". It was not because Signor De Bono was wrong from a legal standpoint that Signor Guariglia objected; it was because of the position taken in the 1921 and 1924 Italian notes to the French. As a result, he felt it was not possible in 1930 to change the line of argument.

The fourth point in the Guariglia dispatch is perhaps the most significant. He referred to the two levels at which discussions with the French were occurring: (i) at the formal diplomatic level, which concerned formal protests - first, against the 1919 Convention and 1924 demarcation (in 1921 and 1924), then, against the French move into Tibesti (in 1930) and, finally, against French moves north of a strict southeast line (for example, in Tekro in 1934); and (ii) at the government-to-government negotiating level to delimit Libya's southern boundary. As to level (ii), Signor Guariglia's position was that these negotiations should be based on Article 13 of the 1915 Treaty of London.

It needs to be emphasized here that in 1929 Mussolini, acting as Foreign Minister, had presented to France a formal claim down to 18° N latitude, which included within Libyan territories all of Tibesti and Borkou. What Guariglia was saying is that the basis for negotiating this with the French should be under Article 13. Of course, as seen in 5.4 above, Mussolini made clear to M. Beaumarchais that the origin of the 1929 Declaration was Italy's Ottoman heritage. But rather than argue with the French over the historical facts concerning Ottoman claims and occupation, the Italian Government opted to rely on Article 13, under which France had a clear and unfulfilled obligation to Italy.

Signor Guariglia concludes this part of his note by saying that Minister of Colonies De Bono appeared "convinced of these objections". The documents relied on here by Chad to support its "mock war" reveal there was no war at all: involved was the usual kind of inter-Ministerial exchanges of views and alternative positions that occur in any government over difficult questions of policy.

The Guariglia dispatch then proceeds to discuss tactics: how best to link the French moves northward to the on-going Franco-Italian negotiations in which Italy had made its 1929 proposal to delimit the southern Libyan boundary along 18° N. It again is made clear that there were two sets of discussions underway with the French: (i) discussions concerning the 1919 Convention; (ii) discussions under Article 13.

The fourth and fifth proposals of this dispatch appearing in the English translation of the Document, here annexed, set out with particular clarity the agreed Italian negotiating tactic.

TRANSLATION

PERSONAL

Rome, 4 March 1930

Dear Mr. Ambassador,

In the last telegram we sent you, concerning our advancement towards Toummo and the appropriate steps we should take vis-à-vis the French Government, I expressed reservations as to the instructions concerning the recent issue with the French about the occupations of the Tibesti by the French with the expedition of Major Aubert which left from El Faya (Borkou), and apparently, was directed to the occupation to the three centers of the Tibesti: Bardai, Ur and Sherda.

Since H.E. Grandi, with whom I spoke of the issue during his recent visit to Rome, has authorised me, following my request, to make his direct arrangements with you, before sending you the final dispatch of instruction. I am writing to you to seek your opinion about what our best course of action should be, for the time being.

Let me start by quoting the following words contained in a memo from the Ministry of the Colonies on the subject:

> "French ownership of the Tibesti must be strongly opposed by us, as it is entirely situated within the disputed part of the Libyan hinterland, for which no boundary delimitation as yet occurred.
>
> It must be remembered that the Ottomans had permanent garrisons stationed in Bardai and Ur, and that the entire region was administered by the Turks in the Kaimakam of Tebu Reshadah, centered in Bardai.
>
> A request for explanations from the French Government on this point seems essential; a swift diplomatic reaction would help reducing the damaging effects that a permanent occupation of the Tibesti would have on the current negotiations. On this subject, it may be useful to remember

> that, during the Versailles negotiations, France offered us the northern part of Tibesti, and that although we did not expressly reject this offer, we simply dropped it."

I have already pointed out the errors in the above affirmations to H.E. De Bono. They are as follows:

1) Whatever the disagreement between us and the French about the interpretation given by the 1919 Anglo-French Convention of the 1899 Declaration, the fact remains that even the most favourable line claimed by us, only gives us a small part of the North-East of Tibesti, i.e. a line running from Bir-Birkis via Emi-Hessu to a point North of Gouro, (the green line on the map of the [Ministry of the] Colonies No. 674/1926, which Y.E. certainly has). In the event that France accepts this line, we are still committed to recognising it, on the basis of the Prinetti-Barrère accord of 1902. It is therefore inappropriate to say that "the ownership of the Tibesti by France must be strongly opposed by us, as it is entirely included within that part of the Libyan hinterland, for which no boundary delimitation as yet occurred".

2) Similarly, any reference to historical account of permanent Ottoman garrisons in the Tibesti is inappropriate, because these arguments are precluded by the Prinetti-Barrère exchange of notes; or rather, by the way in which the Ministry of Colonies interpreted it in the notes it made us write to France in December 1921 and March 1924.

Once more, I would like to stress that all we are entitled to claim, is that small part of North-East Tibesti, which is mentioned in the Anglo-French Convention of 1899.

3) It would be even less appropriate to bring up France's previous offer of nothern Tibesti which she made during the Versailles negotiations, since it constitutes no basis for diplomatic discussions.

4) The latest Franco-Italian negotiations are thus to be placed solely on the basis of the Treaty of London, and in the context of the obligations if territorial compensations, which have so far not been satisfactorily fulfilled.

The Ministry of Colonies now looks convinced of the validity of these objections, and I am certain that Y.E. will also concur.

What remains to be looked at now, is the appropriateness and structure of our approach to the French Government in order not to undermine with our silence also the issue of the interpretation of the 1899 Convention, in the event that French occupation will extend to the disputed area.

It also remains to be seen how we can usefully link this move to the current Franco-Italian negotiations for the modification of the Libyan boundary according to our latest request, i.e. up to 18°N.

In reality, I believe that even though we have based our latest discussions on the Treaty of London, this has not had the effect of closing or undermining the other discussion, concerning the Anglo-French Convention of 1919, which carried on without reaching any result until the Quai d'Orsay's note of 21 June 1924.

I also believe that the two matters under discussion would proceed side by side, without harming our interests; on the contrary, with some benefit for the on-going negotiations. Therefore, I think it would be a good idea to take the French military moves as an opportunity to remind France of our interpretation of the Anglo-French Convention of 1899, and to warn it that we cannot recognises any occupation that takes place in the disputed areas. To this statement, it may be useful to add a sentence recalling the wider demands we made on the basis of the Treaty of London to make the French understand that, although we cannot claim to have any rights to the Tibesti, our "hopes" are not found solely upon France's generosity should acknowledge to us on the basis of a more equitable definition of that hinterland we were, by force circumstance, obliged to accept in the Prinetti-Barrère Accords of 1902.

I realise that this argument is somewhat over-stretched, and has no legal basis; but perhaps it should not be hard to adjust it slightly, since when it comes to compensations arising from the Treaty of London we are always in the field of equity, it is a fair claim; even in the terms of the Treaty of London.

In any event, I would be grateful if you could let me know your opinion on the subject, so that the precise text of the instructions to be forwarded to your Embassy can be submitted to our Ministry and to the Ministry of Colonies.

Thanking you in advance, please accept my sincere regards,

Signed

Guariglia

5.6 NOTE FROM ITALIAN AMBASSADOR IN PARIS TO MINISTER OF FOREIGN AFFAIRS, 6 MARCH 1930 (CC-M, ANNEX 64)

Ambassador Manzoni's prompt response of 6 March to the Guariglia "personal" dispatch of 4 March affirmed that Italy had to -

> "... adhere to the documents of 1902 and Art. 13 of the Treaty of London, both of which offer the most favourable support for our arguments, since they were entered into with that spirit."

He advised strongly against departing from the diplomatic position followed up to then based on the 1899 Declaration's strict southeast line in dealing with the French incursions withdrawal. North of the strict southeast line there could be no question of any French sovereignty, he said.

Manzoni's hasty response, on the other hand, was clearly wrong in suggesting that Mussolini's notes of 29 June and 17 October 1929, in which Italy claimed down to 18° N, had acknowledged French sovereignty south of a strict southeast line. Apparently, he based this incorrect opinion on the fact that in these notes Article 13 had been invoked rather than Italy's Ottoman heritage[1].

The CC-M concludes from this exchange between Rome and Paris (Annexes 5 and 6) that the French Ministry had rejected the Colonial Ministry's arguments and that, once more, the latter had to "s'incliner". The fact is that, only a year before, Mussolini, wearing his Foreign Minister hat, had accepted the Colonial Ministry's urging to extend Italy's claim, and had advanced Italy's claim south to 18° N latitude so as to include within Libya all of Tibesti and Borkou.

What the two Ministries were debating over were negotiating tactics; and they readily reached agreement on this.

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[1] See, LM, paras. 5.151-5.156, 5.169 and 5.172; LC-M, paras. 4.254 and 6.17, et seq.; and para. 6.224, et seq., Vol. 1 of this Reply.

TRANSLATION

COPY

Paris, 6 March 1930 (VIII)

Dear Guariglia,

These are my views regarding your letter to me dated 4 March.

We have to adhere to the documents of 1902 and Art. 13 of the Treaty of London, both of which offer the most favourable support for our arguments, since they were entered into with that spirit.

I would not advise departing from them, as they are undoubtedly our legal basis. We cannot therefore enter into questions of territorial sovereignty with the French to the south of the line most favourable to us, based on the diplomatic position we have adopted with regard to the demarcation of the sphere of influence between France and Britain under the Anglo-French Convention of 1899. Immediately to the north and north-east of this line, there can be no question of sovereignty other than between us and the British and not between us and the French. But in order to foresee any eventuality, I believe that it would be useful if we were to send an "aide memoire" to the Quai d'Orsay in more or less the following terms: "According to reports in the press, a French military mission left some months ago for the military re-occupation of certain centres in the Tibesti. Under instructions from his Government, the Italian Ambassador would remind you that ..... (and here you will set out our diplomatic position based on the reservations of 1899 and the agreements of 1902: I do not have sufficient details here to do so accurately) ..... and therefore, the Italian Government considers the territories to the north of the line in question as forming part of Tripolitania and Cyrenaica under its sovereignty".

The requests for territorial compensation by France based on Art. 13 of the Treaty of London which we can and have made to the south and to the west of the following territorial demarcations originate from the boundary drawn up under the Bonin-Pichon 1919 exchange of notes and from the line claimed in the instruments of 1899 and 1902.

To attempt to act differently and to deny French sovereignty to the south of our line of 1899 would in my opinion mean to proceed without any legal basis and in conflict with our previous acts in this connection.

We would be in contrast with our own notes of 29 June and 7 October 1929 to the French Embassy, which included Tibesti under French sovereignty.

The new memorandum which I have proposed above should be linked to mine of the 3 March. I enclose a copy of the reply which the Quai d'Orsay sent me with particular promptness. It is signed by Mr Berthelot. It opens the way to many useful conversations on problems of indigenous policy and the presence on French territory of numerous Libyan refugees.

With kind regards.

Yours

Signed MANZONI

5.7 NOTE FROM ITALIAN MINISTRY OF COLONIES TO MINISTRY OF FOREIGN AFFAIRS, 3 APRIL 1930
(CC-M, ANNEX 65)

This note of the Ministry of Colonies to the Ministry of Foreign Affairs dated 3 April 1930 comments on a note the latter had prepared concerning Libya's southern frontier. As the note says at the end, the forthcoming negotiations, in preparation for which the Foreign Ministry's note had been prepared, were to be based entirely on the prior diplomatic notes and to leave entirely in suspense the matter of compensation under Article 13, although reserving Italy's position.

The Colonial Ministry agrees with the Foreign Ministry's resumé of the prior official diplomatic notes of Italy. But it recalls that in 1924 the Ministry of Colonies had asked that the question be carefully examined whether Italy's alleged adherence in 1902 to the 1899 line was so broad as to preclude any reliance by Italy on rights in the area passed on by the Ottoman Empire.

He then brings up the point that in recent years in Italian Colonial circles a narrow interpretation of the Italy's adherence in 1902 received energetic support, a position having "éléments littéraires et logiques non négligeables". This narrow interpretation apparently had never been proposed in the diplomatic correspondence; and the Ministry of Colonies hastened to add that it would be awkward to do so now, particularly since the diplomatic protests against the 1919 Convention had all been based on a strict southeast line under the 1899 Declaration.

The Colonial Minister's note goes on to say that the foregoing had been recalled so that Ambassador Manzoni might be placed in a position to demonstrate in the negotiations lying ahead that Italy had already compromised its position by basing its protests on the strict southeast line - at least in the view of the Italian colonialists, who rejected any broad interpretation of the 1902 Accord to the effect that Italy had renounced its Ottoman inheritance.

De Bono's note adds that Italy must insist that the 1899 line was a strict southeast line and not the line "interpreted" in 1919. It had only been a "theoretical" line in the past and to become a real boundary it would have to be effectively occupied on both sides, which he said had not occurred in 1930 (when this note was written).

This note appears to be accurate in every respect; and it certainly reflects no dispute of any kind between the two Ministers. It is a helpful note to guide the Italian Ambassador in Paris in the course of his discussions with the French Government, and was so regarded by the Foreign Ministry.

TRADUCTION INTEGRALE

Document du 3.04.1930

Note du Ministère des Colonies au Ministère des Affaires Etrangères

J'ai examiné le texte de la communication préparée par votre Ministère royal sur la question de la frontière méridionale libyenne mais aussi les considérations qui la précédent. A mon tour, et avant d'exprimer mon avis, je considère comme opportunes certaines observations brèves.

Les précédents officiels rappelés dans le télégramme de votre Ministère sont exacts. De toute manière, il me semble déplacé de rappeler que ce Ministère, jusqu'au 16 juillet 1924, avec le rapport n.15307, priait le vôtre de bien vouloir examiner attentivement si la portée de notre adhésion à la ligne précisée dans la déclaration anglo-française de 1899 (échange de lettres Prinetti-Barrère) était effectivement si large à annuler tous ces droits de caractère territorial que nous pouvions fonder sur l'état de droit et de fait préexistant en Libye à notre occupation.

Je rappelle encore que l'interprétation, disons, restrictive de notre adhésion fut, au cours de ces dernières années, avancée de nouveau et soutenue énergiquement par des amateurs de questions coloniales, lesquels basent leur thèse sur des éléments littéraires et logiques non négligeables, dérivant du texte des lettres Prinetti-Barrère; prenant en considération également des interventions importantes, parmi lesquelles celle de S.E. Tittoni dans GERARCHIA (juillet 1927) en réponse à un article du TEMPS. Cette interprétation, qui est bien connue des colonialistes français, n'a jamais été, à ma connaissance, proposée par voie diplomatique. Et je me rends compte comme il serait malaisé de le faire après que toute notre action diplomatique, et en particulier celle développée contre la Convention anglo-française de 1919, fut toute fondée sur la défense de la ligne indiquée dans la déclaration de 1899, c'est-à-dire celle qui partant du croisement du Tropique du Cancer avec le 16° parallèle est greewich descent en direction du sud-est jusqu'à la rencontre du 24° parallèle est greewich.

J'ai voulu rappeler tout cela parce qu'il me semble peut-être utile que notre Ambassadeur à Paris, dans les négociations peu faciles qu'il devra conduire, soit en mesure de démontrer que l'acceptation de notre part de cette ligne, représente déjà un compromis par rapport aux prétentions du milieu colonial italien, lequel refuse aux lettres Prinetti-Barrère une interprétation si large à conduire au renoncement de tous ces droits de caractère territorial qui ont été sans contestation reconnus à la Turquie et qu'elle avait, aussi, de fait exercés.

Après ce préalable, je n'ai aucune difficulté à donner mon accord au canevas proposé, cependant ayant présent les deux indications suivantes:

1) Admise comme base de la frontière la ligne précisée par la déclaration anglo-française de 1899, on devra exiger que le tracé de celle-ci soit celui qui résulte de cette déclaration, et non pas de la Convention anglo-française du 8 septembre 1919 contre laquelle furent élevées, en son temps, des protestations diplomatiques formelles. A la base de notre argumentation, il y a la note du 24 novembre 1921 n.543, à laquelle on fait encore référence, en ce qui concerne la documentation technique de notre thèse.

2) La ligne en question est une ligne tout à fait théorique, que les diplomates traceront sur la carte au travers de régions presque entièrement méconnues, dans le seul but d'éviter que ne se répétent des conflits dangereux entre la France et l'Angleterre dans leur expansion africaine. Posée comme une véritable ligne de frontière, elle devra subir les améliorations qui seront nécessaires pour donner à cette ligne la possibilité de répondre à la nouvelle fonction: elle devra comprendre les localités qui offrent des possiblités de vie et permettent de procéder à l'effective occupation de la frontière, nous mettant en mesure d'accomplir complètement nos devoirs internationaux, en particulier en ce qui concerne la police des zones de frontière. Ce qui représente non seulement un intérêt pour nous, mais aussi pour nos voisins.

Je prends, enfin, acte que la négociation prévue, basée exclusivement sur les précédents diplomatiques de la question, laisse entièrement en suspens tout ce qui concerne les éventuelles compensations coloniales en conséquence de l'art.13 du Traité de Londres, en gardant intacte la valeur des réserves faites en son temps sur ce point.

5.8 TELEGRAM FROM ITALIAN MINISTER OF FOREIGN AFFAIRS TO ITALIAN EMBASSY IN PARIS, 18 APRIL 1930 (CC-M, ANNEX 66)

This dispatch of 18 April 1930 from Signor Grandi, the Italian Foreign Minister, to Ambassador Manzoni is the document on which the Colonial Ministry had commented in the dispatch just discussed (5.7), when it was only in draft form. It is a definitive statement of the Italian position in the light of the French military advance northward into Tibesti.

The basis of the communication to be sent to the French Government by Italy's Ambassador in Paris was to be: (i) Italy's rights derived from the 1902 Accord (and its reference there to the 1899 Declaration); and (ii) Italy's non-recognition of the 1919 interpretation of the 1899 Declaration, which modified the direction and character of the 1899 strict southeast line. The note suggests the text of a note verbale to be sent to the French Government along these lines, including the reservation that the "mise au point" of the Italian note did not compromise any rights owed to Italy under Article 13, as to which the Italian Government had advanced certain claims in the course of the negotiations with the French - a reference to the 1929 claim down to 18°N latitude made by Mussolini in his negotiations with M. Beaumarchais.

The Foreign Minister then referred to the Colonial Ministry's note discussed earlier (5.7), a copy of which he enclosed for Ambassador Manzoni's guidance - hardly an indication that they were at war or even in any kind of disagreement. The dispatch noted that the first observation at the end of the Colonial Ministry's note was reflected in his instructions; as to the second, he suggested prudence so as not to tip Italy's hand to the French.

Once again, this is an indication of harmony between the two Ministries.

TRADUCTION INTEGRALE

Document du 18.4.1930

Télégramme du Ministère des Affaires Etrangères à l'Ambassade d'Italie à Paris

Par la dépêche N.841 en date du 28 février, ce Ministère priait V.E. d'envoyer une communication au Gouvernement français au sujet de notre prochaine occupation de la région de Toumo et de la mission Killian. En même temps, ce Ministère se réservait d'étudier la possibilité et l'opportunité de présenter une communication ultérieure au Quai d'Orsay à propos des informations recueillies dans la presse sur l'occupation du Tibesti, en rapport avec la question encore ouverte des frontières méridionales de la Libye.

Ce Ministère, éliminant cette réserve, considère que, à la suite des susdites publications qui n'ont pas été démenties, il semble opportun de confirmer au Gouvernement français notre thèse juridique bien connue au sujet des frontières méridionales de la Libye, de manière à ce qu'elle ne puisse être discutée en raison du fait nouveau qu'est l'occupation militaire française du Tibesti. La communication au Gouvernement français doit être fondée sur la base claire et indiscutable des droits qui nous reviennent suite à l'échange de notes Prinetti-Barrère de 1902 (se référant à la démarcation des sphères d'influence entre la France et l'Angleterre précisée par la Convention anglo-française de 1899), et sur la non reconnaissance de notre part de l'interprétation donnée à ladite Convention de 1899 par la Convention successive anglo-française de 1919, laquelle en réalité n'interprète pas mais modifie en substance la Convention de 1899.

La note verbale, que je prie V.E. de bien vouloir présenter au Quai d'Orsay, pourrait être formulée à peu près dans les termes suivants: "D'après des informations recueillies dans la presse, une mission militaire française est partie, il y a quelques mois, afin de procéder à l'occupation militaire de certains centres du Tibesti.

Suivant les instructions de son Gouvernement, l'Ambassade royale d'Italie saisit l'occasion pour rappeler que, conformément à l'échange de notes Prinetti-Barrère du 1er novembre 1902, le Gouvernement de la République a reconnu comme limite maximale de l'expansion française dans ladite région la ligne précisée par la déclaration anglo-française du 21 mars 1899.

On rappelle aussi que le Gouvernement royal a déjà, à maintes reprises, notifié au Gouvernement de la République qu'il ne peut pas reconnaître, et considère donc à son égard comme privé de tout effet, la Convention anglo-française successive de 1919, laquelle a modifié fondamentalement la Convention de 1899, tant dans son contenu juridique, transformant en ligne définitive de frontière une ligne indiquant seulement une répartition de zones d'influence, que dans ses effets territoriaux, déplaçant vers le nord le tracé de la ligne elle-même.

Le Gouvernement italien a donc l'honneur de faire connaître au Gouvernement de la République qu'il considère les territoires situés au nord de la ligne précisée par la Convention anglo-française de 1899 comme des territoires faisant partie de la Tripolitaine et de la Cyrénaïque qui sont sous sa souveraineté.

Le Gouvernement italien ajoute que cette "mise au point" est bien entendu faite sans compromettre les droits qui reviennent à l'Italie en vertu de l'art.13 du Traité de Londres, au sujet desquels ont été exposées au Gouvernement français les requêtes du Gouvernement royal au cours des négociations."

Je porte à la connaissance de V.E. que le Ministère royal des Colonies, invité à exprimer son avis sur le projet de communication à adresser au Quai d'Orsay, a répondu par la note 62010 du 3 courant (ci-jointe une copie) dans laquelle il se déclare en substance d'accord. Au sujet des deux indications dont il est question à la fin de ladite note, j'observe qu'il est tenu compte de la première dans le projet de note verbale alors qu'à propos de la question soulevée par la seconde, il semble opportun, dans l'immédiat, de ne pas la mentionner dans une communication qui a pour but de préciser au Gouvernement français la thèse italienne au sujet des frontières libyennes en relation au fait nouveau qu'est l'occupation militaire du Tibesti. En revanche, il faudra prendre en considération si et quand, une fois les deux Gouvernements mis d'accord sur la ligne de frontière théorique ou conventionnelle, il s'agira de proceder à la délimitation de la ligne elle-même.

5.9 MEETING AT PALAZZO CHIGI ON 16 JULY 1930 (CC-M, ANNEX 68)

This meeting on 16 July 1930 was made up of senior officials of the Ministries of Foreign Affairs ("FA") and of Colonies ("Col"), including the cartographer Signor Dardano. In addition, Signor Astuto, Governor of Erythrea, attended. There is not a trace in these minutes of any basic difference of view between the two Ministries.

The meeting was called to examine Italy's position concerning Libya's southern frontier. The context of the meeting was described by Comm. Guariglia (FA): the negotiations between France and Italy were going slowly; Italy had rejected France's offer in 1928 of the Djado salient; France had rejected the 1929 Mussolini claim down to 18°N latitude.

Two notes verbales had recently been exchanged between the two Governments: Italy's note of 19 May 1930 and the French reply of 25 June 1930[1].

The 19 May note set out Italy's position: (i) non-recognition of the 1919 Convention; (ii) unquestioned Libyan sovereignty to territory north of the strict southeast line described in Article 3 of the 1899 Declaration; and (iii) reservation of right to compensation under Article 13 of the 1915 Treaty of London. This had been Italy's consistent position right from the start of its protests in 1921.

France's note, however, adopted a new line of argument, according to Comm. Guariglia (FA), and it was this shift that was to be examined at the meeting.

Comment: *A discussion of the French shift in position may be found at LM, paras 5.275-5.277. France, in effect, adopted two*

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[1] These notes are fully discussed in LM, para. 5.273.

> *inconsistent positions concerning the meaning and effect of the 1902 Accord. However, this inconsistency was already apparent as early as the first French note verbale of 7 February 1923 responding to Italy's protest of the 1919 Convention, although apparently it had gone undetected by the Italian Government at the time. On the one hand, France argued that the 1902 Accord, by referring to the famous map, constituted Italy's acceptance of the southeast line shown on the map, which was, according to France, in fact not strictly southeast but virtually the same line as "interpreted" in the 1919 Convention. On the other hand, France argued that the southeast line was none of Italy's business because it lay outside the territory of Tripolitania shown on this map (the wavy, dashed line), and therefore France and Great Britain had had no obligation to inform Italy prior to entering into the 1919 Convention. How, logically, Italy could have expressly recognized in the 1902 Accord a line and then be told that the 1902 Accord did not concern the territory through which the line passed, and hence was of no concern to Italy, was never explained by France and is not now explained by Chad.*

Comm. Guariglia (FA) went on to explain that Italy was basing its claim concerning Libya's southern boundary during the negotiations with the French on the compensation due to Italy under Article 13 and its rejection of the 1919 Convention. He gave two reasons why this approach had been decided on:

- Italy also sought modifications of the Libya's western boundary delimited by the 1919 Franco-Italian Accord, so Article 13 seemed the proper route to follow;

- Italy was not too sure of its arguments based on Italy's succession to Ottoman sovereignty in the area.

However, Comm. Guariglia (FA) expressed concern that by limiting itself to Article 13, Italy would not be able to acquire enough territory in the region to satisfy it; and he also had proposed that the question be dealt with in a broader context.

The meeting then turned to examine the latest French thesis. Its reliance on a map annexed to the 1899 Declaration was noted - as well as the additional contradiction in the fact that in a 1921 note the French Government had said there was no map annexed to the Declaration[2]. Comm. Guariglia (FA) said that it was essential to determine whether there was such a map annexed.

Comment: *This shows that even up to July 1930 the French had maintained the deception with the Italian Government that a map had been annexed to the 1899 Declaration and that this map was referred to in the 1902 Accord. It will be recalled that the Italian Government then set about looking for this allegedly annexed map[3].*

Comm. Mischi (Col) then took the floor. He said that there were good arguments to support the view that the 1902 Accord was limited to determining the French zone of influence to the west of Libya's frontiers; not to its east. However, he recognized that even the best legal arguments against France were insufficient to obtain a satisfactory result. A satisfactory solution could only result from a friendly climate in Franco-Italian relations. The minutes record:

> "Le Comm. Guariglia est parfaitement d'accord avec cette idée."

Comment: *Where is what the CC-M describes, emerging from this and other documents, as:*

> *"Les profondes divergences, voire même l'affrontement non épisodique, entre le Ministère des Colonies et le Ministère des Affaires Etrangères sur la question du fondement juridique à donner aux prétentions italiennes ...[4]."?*

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[2] See LM para. 5.188, et seq., where the French note verbale of 19 September 1921 is discussed. This note stated that "la dite déclaration, contre usage, n'est pas accompagnée de carte ou de croquis" (LM, Exhibit 46).

[3] See LM, para. 5.277.

[4] CC-M, para. 7.60.

Later in the meeting, there was a discussion of the best boundary to try to obtain if Italy had to modify its position in favour of a boundary running along 18° N latitude. Comm. Mischi (Col) noted the importance of obtaining Ounianga since it was a bridge-head toward the richest regions of this part of Africa beyond the desert. If Italy could not obtain Ounianga its most southerly frontier line latitude would be Koufra since there were no intervening water holes. Comm. Guariglia (FA) expressed the fear that the French would not agree to Ounianga and would probably propose a line along 20°N latitude.

One cannot extract from this meeting any basic divergence of opinion at all; it was an exchange of views concerning various approaches to the French. This evidence again refutes Chad's "mock war".

TRADUCTION INTEGRALE

Document du 16.7.1930

Note sur la réunion tenue au Palais Chigi le 16 juillet 1930 à 22 heures

Sont présents:
le Commandeur Guariglia, Directeur général E.L.A.
S.E. Astuto Gouverneur de l'Erythée
le Commandeur Anceschi, Directeur général de l'Afrique septentrionale au Ministère des Colonies
le Commandeur Mischi, Chef de cabinet au Ministère des Colonies
le Commandeur Dardano, Chef du service cartographique au Ministère des Colonies
le Chevallier Guarnaschelli du bureau IV E.L.A.

Le commandeur Guariglia déclare que les négociations italo-françaises avancent lentement, même qu'aucune communication nous est parvenue de la France en réponse à notre dernière note d'octobre passé; mais, pouvant se vérifier la nécessité d'un moment à l'autre de devoir reprendre les discussions, il a tenu à convoquer la présente réunion afin de clarifier notre thèse sur la question des frontières méridionales de la Libye, thèse exposée de manière différente par certains auteurs coloniaux.

Cela est d'autant opportun non pas pour les négociations italo-françaises mais en relation avec la récente mission réalisée par l'explorateur Killiam dont il a rendu compte dans l'"Illustration française" et aussi en relation avec l'expédition militaire française visant à transformer les postes militaires provisoires d'occupation française du Tibesti en postes définitifs. L'Ambassadeur royal à Paris a présenté une note au Quai d'Orsay pour réaffirmer notre point de vue concernant la non reconnaissance de la Convention anglo-française de 1919 et donc de l'appartenance de la Libye au territoire situé au nord de la ligne établie par la précédente Convention anglo-française de 1899. Dans cette note, on faisait naturellement des réserves sur les compensations qui nous revenaient sur la base de l'art.13 du Traité de Londres. Le

Quai d'Orsay a répondu à cette note ne répétant pas les arguments déjà développés une autre fois, mais en engageant une nouvelle ligne de défense, sur laquelle on désire connaître le point de vue des spécialistes.

Afin d'illustrer la situation générale, il ajoute que nous avons fondé notre demande au sujet des frontières méridionales de la Libye, au cours des négociations italo-françaises, sur des compensations qui nous revenaient sur la base de l'art. 13 du Traité de Londres, (et sur les réserves que nous avons faites à l'égard de la Convention anglo-française de 1919), et cela pour différentes raisons: soit parce que nous demandions des rectifications de frontière non seulement dans la zone orientale mais aussi dans celle occidentale, et donc afin de modifier les stipulations de l'accord Bonin-Pichon de 1919, soit parce que certains arguments avancés par nous à propos de cette question des frontières libyennes comme ceux qui sont fondés sur notre succession à la souveraineté turque, ne semblent pas trop sûrs.

Il résume les négociations développées jusqu'à maintenant avec la France sur cette question; il rappelle que la France nous proposa la cession d'un triangle désertique au sud de la ligne In-Ezan-Toumo, comprenant l'oasis de Giado. Nous refusâmes l'offre et, tenant compte des précédentes conversations Mussolini-Beaumarchais, nous fûmes conduits à faire une contre-proposition visant à porter toute la frontière méridionale de la Libye le long du 18° parallèle.

Le commandeur Mischi observe que la zone de Giado peut être considérée comme la partie la plus désertique du désert du Sahara, et qu'il ne fait aucun doute sur l'opportunité de refuser l'offre française.

Le commandeur Guariglia reprend en déclarant que notre contre-proposition a été refusée par les Français et que les choses en sont là.

Il retient qu'à nos arguments fondés sur les traités et conventions, la France puisse en opposer beaucoup d'autres excellents; et que, nous limitant à demander des compensations sur la base de l'art. 13 du Traité de Londres, le maximum qui pourra nous être concédé de la part de la France ne suffira pas à nous satisfaire.

Il a déjà exposé à S.E. Grandi qu'il ne serait pas opportun de limiter les négociations italo-françaises aux deux questions relativement peu importantes que sont la Tunisie et les frontières libyennes, mais que ces deux questions doivent être situées dans une négociation plus vaste et elles pourront alors être résolues non sur la base d'arguments juridiques, mais dans le cadre d'une négociation générale à fond politique.

Cela n'empêche pas qu'il désire dans cette réunion examiner un peu plus en détail les arguments juridiques exposés soit par nous soit par les Français.

L'on donne sur ce point lecture de la dernière note du Quai d'Orsay.

Le commandeur Guariglia observe que la nouvelle thèse française se fonde sur l'existence d'une carte annexée à l'accord anglo-français de 1899, carte que les mêmes Français ont dite inexistante dans une de leurs notes officielles de 1921. La contradiction ne peut pas être plus évidente. Maintenant, puisque l'accord Prinetti-Barrère de 1902 se réfère justement à cette carte pour limiter au nord la zone d'influence française, il semble qu'il faille en premier lieu vérifier de manière sûre s'il y avait ou non une carte antérieure[*] à l'accord anglo-français de 99, après quoi il faudra examiner la meilleure façon de répondre au Gouvernement français.

Le commandeur Mischi retient qu'il y a de bons arguments pour soutenir que l'accord Prinetti-Barrère aurait dans tous les cas voulu se limiter à déterminer la zone d'influence française dans le secteur occidental de la frontière et non pas dans le secteur oriental. Malgré cela il se rend compte que les meilleurs arguments juridiques que nous pourrons opposer à la France, seront insuffisants afin de rejoindre une solution satisfaisante de cette question. La solution s'obtiendra seulement grâce à un climat d'amitié dans les rapports italo-français, et obtenant d'une France amie une ligne de frontière qui puisse constituer réellement une frontière, dans le sens où il existerait certains points où des garnisons pourraient vivre.

Le commandeur Guariglia est parfaitement d'accord avec cette idée.

S.E. Astuto retient que la nouvelle thèse française -s'il existe une carte annexée à la Convention de 1899- est incontestable avec les seuls

[*] [sic] It should obviously read "carte annexée".

arguments juridiques. Il rappelle qu'en 98 la France et l'Angleterre, à la suite de l'arrêt brusque de l'expansion française en Afrique équatoriale déterminé par l'incident de Fashoda, s'accordèrent sur la répartition de l'Afrique équatoriale. Donc, convention de 98 et convention additionnelle de 99. En 1900 et 1902, l'Italie commenca à s'intéresser à la Libye et il en résulte les accords Visconti Venosta-Barrère et Prinetti-Barrère visant à poser une limite à l'expansion vers le nord de la France (et) vers l'Afrique équatoriale. Ces actes se réfèrent uniquement à la France, et Prinetti accepta, en 1902, comme limite nord de l'expansion française la ligne qu'indiquait la frontière de la Tripolitaine sur la carte que l'on dit annexée à la Convention de 99. Donc, à juste titre la France nous oppose que si, en 1919, elle a modifié en accord avec l'Angleterre la ligne précédente de 1899, tout cela s'est développé dans une zone à l'extérieur de la frontière de la Tripolitaine qui constituait la limite infranchissable de l'influence française selon l'accord Prinetti-Barrère. Et la France ajoute que même si l'Angleterre avec un accord de principe successif à 1919 a cédé à l'Italie des territoires qui lui revenaient, elle ne pouvait pas évidemment céder ce qu'elle avait déjà reconnu être acquisition française.

Il lui semble que nous pouvons contester ce raisonnement seulement dans le cas où l'accord de principe que nous avons mentionné et qui ne peut être que l'accord Milner-Scialoia, soit non pas postérieur mais antérieur à la Convention franco-anglaise de 1919.

Le commandeur Guariglia retient intéressant de relier la réponse donnée par le Foreign Office à nos réserves au sujet de la Convention de 19: à sa lecture, il résulte que l'Angleterre, d'un côté, s'oppose à l'acquiescement tacite turc à l'occupation britannique de la zone contestée; puis il nous laisse, éventuellement l'honneur de prouver les éventuels droits italiens sur ladite zone, en conséquence de la substitution de notre souveraineté sur celle turque; il ajoute que dans tous les cas, sa cession à la France ne compromet pas les éventuels droits des tiers lorsque ces droits existent; il finit par observer que le Gouvernement anglais a raison de retenir que le Gouvernement français a des objections particulières à soulever à l'encontre de nos réserves.

Il est évident qu'avec cette dernière phrase le Foreign Office a voulu se référer à l'accord Prinetti-Barrère.

Dans l'ensemble, l'on peut dire que, si la fameuse carte existe, notre thèse juridique est extrêmment faible par rapport aux Français; et que si les circonstances devraient conseiller une définition des frontières libyennes, il serait opportun de faire intervenir les Anglais dans la discussion afin de clarifier la situation de la souveraineté dans le triangle au sud de Koufra que les cartes anglaises attribuent maintenant au Soudan. Nous pourrons peut-être, alors, exploiter l'intérêt anglais de nous avoir comme voisins le long du trait de la frontière soudanaise plutôt que les Français, dont l'on connait les tendances vers le Soudan.

Ensuite, l'on discute au sujet de la meilleure ligne de frontière avec les Français dans le cas où l'on devrait modifier notre demande d'une frontière le long du 18° parallèle.

Le commandeur Mischi remarque la nécessité que nous soit assurée la zone de l'Unianga laquelle représente une espèce de tête de pont vers les régions les plus riches de l'Afrique équatoriale, au-delà du désert. Entre Koufra et l'Unianga, il n'y a pas de point d'eau et ne pas avoir l'Unianga signifierait devoir maintenir à Koufra notre poste extrême de frontière.

Le commandeur Guariglia retient difficile que les Français acceptent de nous céder l'Unianga. Il prévoit que si l'on parvient à un accord, les Français nous proposeront plus ou moins la ligne du 20° parallèle. L'on pourrait adopter, pour la zone au-delà de Toumo, de suivre la ligne de partage des eaux.

Constatant l'utilité de l'échange d'idées, il clôt la réunion.

La séance est levée à 24 heures 30.

5.10 DOCUMENTS RELATING TO THE SCHOOL MAP ATLAS INCIDENT (1930-1931) (MAP LR 16E)

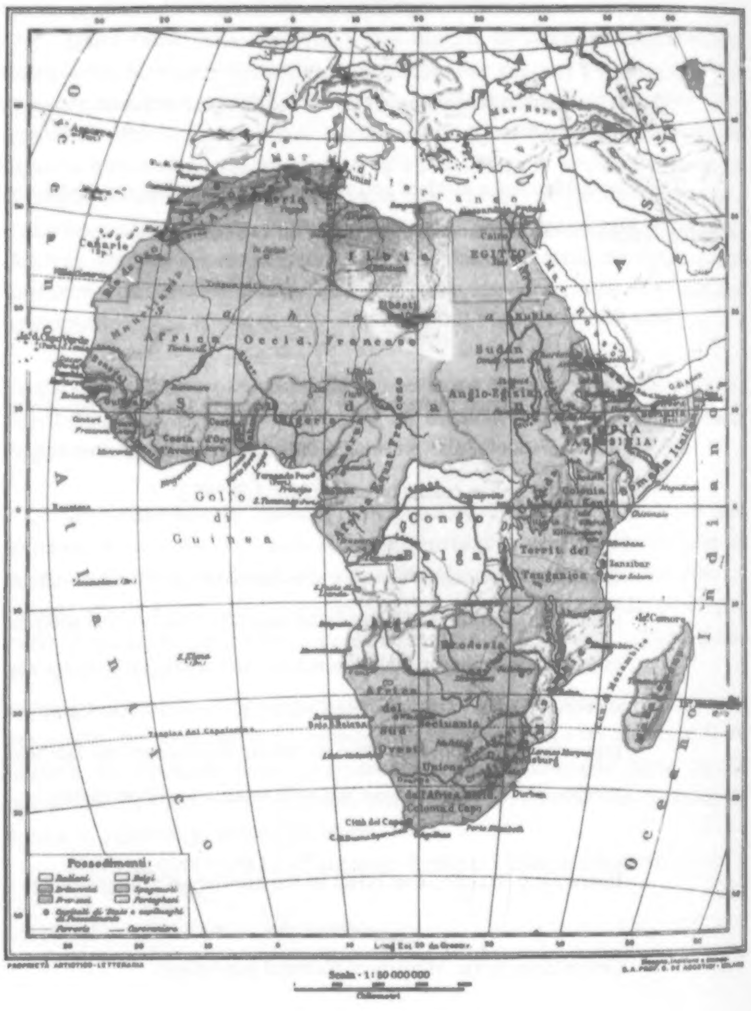
This note is referred to in paras. 6.119 and 6.202, Vol. 1 of this Reply.

The School Map Atlas incident and related documents discussed here are the coup de grâce to Chad's "mock war" between the two Ministries.

These documents show the following:

- A formal French protest of 19 December 1930 to the map in the Italian School Atlas showing Tibesti as completely envelopped within the Italian colony of Libya (Map LR 16E);
- Complete agreement between the Ministry of Foreign Affairs (Guariglia) and the Ministry of Colonies (De Bono)on the solution of leaving in white on Italian maps of Africa "the area where the sovereignty has not yet been defined" for the cartographer preparing the school map "had not taken into account the fact that the frontiers in the area have not been internationally defined".
- Instructions issued to that effect by the Ministry of Foreign Affairs;
- Compliance by the Ministry of National Education;
- No evidence of any further French protest to the revised map on which the area east of Toummo is left in white.

AFRICA


Mar Nero
Mediterraneo
Canarie
Rio de Oro
Libia
EGITTO
Cairo
Tibesti
Africa Occid. Francese
Sudan
Anglo-Egiziano
Nigeria
Costa d'Oro
Golfo di Guinea
Africa Equat. Francese
Congo Belga
Territ. del Tanganica
Colonia del Kenia
Somalia Italiana
Zanzibar
Angola
Rhodesia
Africa del Sud Ovest
Beciuania
Unione dell'Africa merid.
Colonia d. Capo
Città del Capo
Durban
Porto Elisabetta
S. Elena
Ascensione
Comore
Tropico del Capricorno
Oceano Atlantico
Oceano Indiano
Possedimenti:
Italiani
Belgi
Britannici
Spagnuoli
Francesi
Portoghesi
Capitali di Stato e capiluoghi di Possedimento
Ferrovie
Carovaniere
Long. Est 20 da Greenw.
PROPRIETÀ ARTISTICO-LETTERARIA
Disegno, incisione e stampa
G.A. PROF. G. DE AGOSTINI - MILANO
Scala - 1 : 30 000 000
Chilometri

TRANSLATION

From: MINISTRY OF FOREIGN
AFFAIRS
E.L.A.IV

To: ROYAL MINISTRY OF
COLONIES
(Office I northern Africa)
and for information
ROYAL EMBASSY PARIS
ROYAL MINISTRY OF
NATIONAL EDUCATION
(Gen. Dir. of Elementary
Education)

Rome, 22 December 1930

SUBJECT: LIBYAN BOUNDARIES

(Text): The French Embassy sent to this Ministry the following Memorandum dated 12 December:

(French text)

Indeed in the two maps No. 8 of the Atlas for the fourth year and No. 7 of the Atlas for the fifth year of primary school the Tibesti has been coloured in the same green used for the Italian colonies, even if the frontiers between Libya and French equatorial Africa have not been traced with precise dotted lines, like it has been done for all the other frontiers; this shows that the cartographer has not taken into account the fact that the frontiers in the area have not yet been internationally defined.

It would however have been preferable that the cartographer had followed the solution adopted in the map of Africa published by the cartographic service of this Ministry, like the one appearing in the Atlas of the Italian Touring Club, leaving in white the area where the sovereignty has not yet been defined.

We would like in any event to know the opinion of this Ministry on the opportunity to adopt such a solution in further editions of the above mentioned maps; while we believe that we should reply to the above transcribed Memorandum of the Embassy of France.

Signed
Guanglia

TRANSLATION

From: MINISTRY OF NATIONAL
EDUCATION GENERAL
DIRECTORATE OF
PRIMARY EDUCATION

To: MINISTRY OF FOREIGN
AFFAIRS
E.L.A. ROME

Rome, 23 October 1931

SUBJECT: LIBYAN BOUNDARIES IN THE ATLASES OF THE STATE BOOK FOR PRIMARY SCHOOLS

This Ministry communicated with telegram No 241923-992 dated 22 December 1930 the Memorandum of the Embassy of France concerning the Libyan boundaries in the maps of Africa contained in the Atlases attached to the Volumes of the state book for the first and fourth year of primary schools.

This Ministry, having also acknowledged the opinion of the Ministry of Colonies, stated that all further editions would have taken into account the observations expressed in the above mentioned Memorandum.

This Ministry, having acknowledged also the opinion of the Ministry of Colonies, stated that the observations expressed in the above mentioned Memorandum would have been taken into account in further additions.

However, inadvertently, due to the urgency with which the Works for the new edition of the state text books were conducted, the Military Geographic Institute, which prepared this year the proofs for the new edition of the atlases, was not informed of the correspondence with this Ministry.

Thus the first copies of the new edition of the Atlases in question which have now been published resemble those of last year's edition, as far as the maps of Africa are concerned.

In any event we inform this Ministry of Foreign Affairs of this, assuring that instructions have been given as to the preparation of new maps of Africa in which the opinion already expressed by the Ministry of Colonies has been taken into account, and that the new maps will be printed in a number of copies great enough to replace those included in the atlases which have already been distributed.

The Minister

TRANSLATION

From: **MINISTRY OF COLONIES**
GENERAL DIRECTORATE
FOR THE COLONIES OF
NORTHERN AFRICA

To: **ROYAL MINISTRY OF**
FOREIGN AFFAIRS -
ROME and for information
to the ROYAL MINISTRY
OF NATIONAL
EDUCATION ROME

Office I

Rome, 7 January 1931

SUBJECT: LIBYAN BOUNDARIES

I thank this Ministry for informing me with telegram of last 22 December No. 241921/436, of the Memorandum of the Embassy of France concerning the maps of Africa published in the Atlas of the State book for the fourth and fifth year of primary schools.

It would certainly have been preferable that the cartographer, taking the official data only from those who can release them, had followed the solution adopted in the map of Africa published by this Ministry; and I agree that such a solution should be adopted in all further editions of the maps which caused the Memorandum of the Embassy of France.

Signed
De Bono

TRANSLATION

From: MINISTRY OF FOREIGN
AFFAIRS
E.L.A.IV

To: ROYAL MINISTRY OF
NATIONAL EDUCATION
and for information
to the ROYAL MINISTRY
OF COLONIES ROYAL
EMBASSY PARIS

Position Libya 17

Rome, 17 January 1931

SUBJECT: LIBYAN BOUNDARIES

In reference to Telegram No. 241923/992 dated 22 December 1930 of this Ministry I transcribe here below what has been communicated by the Royal Ministry of Colonies on the subject:

> "I thank this Ministry for informing me with telegram of last 22 December No. 241921/436, of the Memorandum of the Embassy of France concerning the maps of Africa published in the Atlas of the State book for the fourth and fifth year of primary schools.
>
> It would certainly have been preferable that the cartographer, taking the official date only from those who can release them, had followed the solution adopted in the map of Africa published by this Ministry; and I agree that such a solution should be adopted in all further editions of the maps which caused the Memorandum of the Embassy of France."

This Royal Ministry subsequently asks to make sure that in the next additions of the Atlases in question the maps concerning Libya and Africa be modified taking as a model the maps of Africa issued by the cartographic service of the Ministry of Colonies.

Signed
Guariglia

TRANSLATION

From: MINISTRY OF NATIONAL
EDUCATION GENERAL
DIRECTORATE OF
PRIMARY EDUCATION

To: MINISTRY OF FOREIGN
AFFAIRS
E.L.A. ROME

Rome, 21 January 1931

SUBJECT: LIBYAN BOUNDARIES IN THE ATLASES OF STATE BOOK FOR PRIMARY SCHOOLS

In reference to telegram No 1923-991 dated 22/12/30 sent to the Ministry of Colonies and, for information, to this Ministry, we inform you that the said Ministry of Colonies has transmitted a copy of the map of Africa it published, in which the areas of not yet defined sovereignty between Italy and France have been left in white.

Rest assured that in the new edition of that Atlas of the state book for primary schools we shall take account of the suggestion of this Ministry which was expressed in the above mentioned telegram.

The Minister

TRANSLATION

From: MINISTRY OF FOREIGN
AFFAIRS
E.L.A.IV

To: ROYAL MINISTRY OF
NATIONAL EDUCATION
(PRIMARY EDUCTION)

Position: Libya 17

Rome, 29 October 1931

SUBJECT: LIBYAN BOUNDARIES IN THE ATLASES OF THE STATE BOOK FOR PRIMARY SCHOOLS

(Text)

We have the honour to acknowledge receipt of the paper of this Ministry of National Education of 23 October No 6218, and we take note that instructions have been given for the preparation of new maps of Africa conforming to the map published by the cartographic service of the Ministry of Colonies, and for the replacement of the maps included in the Atlases which have already been distributed with the new maps.

(Signature)

TRANSLATION

From: MINISTRY OF FOREIGN AFFAIRS
E.L.A. IV

To: ROYAL MINISTRY OF COLONIES
ROYAL EMBASSY
PARIS

Rome 29 October 1931

SUBJECT: LIBYAN BOUNDARIES IN THE STATE BOOK FOR PRIMARY SCHOOLS

REFERENCE: Telegram of this Ministry Nos 201810/44 and 21084/57 of 14 January

(Text) For your Excellency's information, we transcribe the following note dated 23 October of the Royal Ministry of National Education, concerning the above mentioned subject:

"This Ministry communicated with telegram No 241923-992 dated 22 December 1930 the Memorandum of the Embassy of France concerning the Libyan boundaries in the maps of Africa contained in the Atlases attached to the Volumes of the state book for the first and fourth year of primary schools.

This Ministry, having also acknowledged the opinion of the Ministry of Colonies, stated that all further editions would have taken into account the observations expressed in the above mentioned Memorandum.

Thus the first copies of the new edition of the Atlases in question which have now been published resemble those of last year's edition, as far as the maps of Africa are concerned.

In any event we inform this Ministry of Foreign Affairs of this, assuring that instructions have been given as to the preparation of new maps of Africa in which the opinion already expressed by the Ministry of Colonies has been taken into account, and that the new maps will be printed in a number of copies great enough to replace those included in the atlases which have already been distributed."

(Signature)

5.11 LETTER OF COMM. GUARIGLIA TO ITALIAN EMBASSY IN PARIS, 12 MAY 1932 (CC-M, ANNEX 71)

This is a dispatch from the Italian Ministry of Foreign Affairs (Guariglia) to the Italian Ambassador in Paris (Manzoni) dated 12 May 1932. It sets out the full text of the comments of the Ministry of Colonies (dated 13 April 1932) on an earlier dispatch sent to it by the Ministry of Foreign Affairs.

The question being discussed was the French note verbale of 25 June 1930 - two years earlier - to which Italy had never replied. Both Ministries were in agreement that a reply should be made. (It will be recalled that this was the French note on which the discussion at the meeting in the Palazzo Chigi on 16 July 1930 was directed - 5.9).

The Colonial Ministry's note also indicates agreement with the Foreign Ministry on the proposed contents of Italy's reply:

> "Et on est d'accord sur l'argumentation sur laquelle votre Ministère entend baser les instructions à donner à notre Ambassadeur à Paris, tant au sujet de la question générale des frontières libyennes qu'à propos de questions particulières dues à l'activité politico-militaire développée ces derniers temps par les Français à nos frontières."

The Ministry of Colonies then goes into a full discussion of possible arguments that could be made by Italy. As Comm. Guariglia (FA) indicates at the end of his dispatch, even if in 1900-1902 the Italian Government had not been particularly concerned over the Tripolitanian hinterland - for its eyes were set on getting French assurances concerning Tripolitania - nevertheless, today:

> "... nous pouvons bien faire valoir auprès des Français tous les arguments qui peuvent être tirés du texte des accords de 1900 et de 1902."

This was the Foreign Ministry, not the Colonial Ministry, speaking. It was hardly a rejection of the Ministry of Colonies' arguments concerning the 1900-1902 Accords.

Those preparing Chad's CC-M have completely misread this Guariglia-to-Manzoni dispatch. It does not at all support the following conclusion of Chad:

> **"Le Ministre des Colonies revint à la charge[1] le 13 avril 1932, avec ses arguments habituels, mais encore une fois ils furent repoussés par le Ministère des Affaires Etrangères[2]."**

Not only did Comm. Guariglia say, in the passage quoted two paragraphs above, that all of the Minister of Colonies' arguments could be used but he added that, so far as concerned responding to the Italian note of 25 June 1930 -

> **"Le Ministère des Colonies a déclaré de toute manière d'être d'accord sur les lignes de la réponse à donner éventuellement au Quai d'Orsay."**

Once again, a document placed into evidence by Chad destroys its thesis of a "mock war".

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[1] **The CC-M again uses terms of battle: "revint à la charge"! Earlier (5.5) it was "attaque".**

[2] **CC-M, para. 7.59.**

Document du 12.5.1932

Lettre adressée à l'Ambassadeur d'Italie à Paris

Monsieur l'Ambassadeur,

Le Ministère royal des Colonies a répondu à la dépêche de ce Ministère (dont j'ai communiqué une copie à V.E. dans une lettre personnelle du 13 avril courant N.211393/197) avec la note que je retranscris ci-après:

"Ce Ministère a pris acte du contenu de la dépêche en date du 13 avril courant N.21194, au sujet de la délimitation de la frontière méridionale libyenne, et partage l'avis de votre Ministère qu'il n'est pas approprié de laisser sans réponse la note du Quai d'Orsay du 25 juin 1930, qui avance une nouvelle interprétation de l'échange de lettres Visconti-Barrère (1900) et Prinetti-Barrère (1902). Et on est d'accord sur l'argumentation sur laquelle votre Ministère entend baser les instructions à donner à notre Ambassadeur à Paris, tant au sujet de la question générale des frontières libyennes qu'à propos de questions particulières dues à l'activité politico-militaire développée ces derniers temps par les Français à nos frontières.

En effet, aucun doute ne semble exister sur le fondement de l'affirmation que l'échange de lettres intervenu en 1900 a donné à l'Italie les mains libres sur le vilayet de Tripoli, considéré dans son intégrité (Tripolitaine-Cyrénaïque), en posant à la France une limite à sa pénétration vers l'est: limite qui est celle même tracée par la Convention franco-anglaise du 21 mars 1899. Ce Ministère ne connaît pas les préliminaires de l'échange de lettres successif Prinetti-Barrère ayant eu lieu en 1902. De toute manière, on a l'impression (dont votre Ministère peut peut-être contrôler le bien-fondé) que cet échange nouveau de notes soit logiquement intervenu, dans l'intérêt de l'Italie, pour deux types de considérations.

Avant tout, étant donné que la ligne limite tracée par la Convention du 21 mars 1899 s'arrête au croissement entre le Tropique du Cancer et le 16° longitude est Greewich, nous avons dû nous rendre compte que les précédentes déclarations ne garantissaient pas complètement l'intégrité du vilayet de Tripoli, à partir de ce point terminal de la ligne limite. Ce trait de frontière qui correspond justement à la frontière occidentale de la Tripolitaine regarde la seule Tripolitaine d'une part et les possessions françaises tunisiennes et algériennes de l'autre: c'est pourquoi l'on parle seulement de la Tripolitaine dans le second échange de lettres, et non plus de la Tripolitaine-Cyrénaïque, cette dernière est désormais en dehors de la question.

Mais à cette principale précision, il faut considérer que n'ont pas été étrangères les préoccupations créées par la tendance manifeste des autorités françaises coloniales de l'époque, à ronger progressivement les bords occidentaux du vilayet turc, créant ces échancrures artificielles (becs de canards) qui ne manqueront pas de soulever des mécontentements et protestations dans les cercles coloniaux italiens: c'est pourquoi l'échange de lettres de 1902, s'il représentait, d'un côté, notre tacite acquiescement aux occupations abusives déjà intervenues, il posait, de l'autre, au moins l'arrêt à celles qui auraient encore pu se réaliser plus tard.

La ligne pointillée tracée sur la carte annexée à la déclaration franco-anglaise de 1899 ne peut, donc, valoir qu'à partir du point terminal de la ligne limite jusqu'à la mer. Que cette ligne, à l'est de ce point terminal n'aurait aucune valeur, c'est démontré non seulement par sa direction extravagante (il est connu qu'appliquer à une carte véritable cette ligne laisserait en dehors du vilayet de Tripoli même le groupe de maisons de Augila-Gialo et arriverait sur l'anse de la Syrte à peu de kilomètres de la mer!) mais aussi par le fait que même les meilleures cartes françaises ne la reproduisent pas: par exemple la carte édictée par la "Société d'éditions géographiques maritimes et coloniales" d'après les travaux du service géographique de l'Armée française. Si la France avait donné de la valeur à cette ligne pointillée à l'est du croissement bien connu, elle aurait dû protester contre toutes les occupations territoriales que nous avons réalisées au-delà de cette ligne - et l'on ne peut même pas admettre un désintéressement français en raison du fait que ces occupations se sont développées dans une zone réservée à l'influence anglaise. La France avait un intérêt direct à ce que fût respectée cette ligne, parce que c'était la seule manière pour elle de se soustraire à une discussion sur la base de la ligne prévue par la Convention franco-anglaise, et en conséquence à notre grave contestation due au fait qu'elle n'avait pas respecté cette ligne et pour cela, elle n'avait pas exécuté les obligations créées par l'échange de lettres Barrère-Visconti Venosta.

Au cas où il serait possible, sur la base de l'examen des précédents diplomatiques, de confirmer le caractère complémentaire, dans l'intérêt de l'Italie, de l'échange de notes Prinetti-Barrère de 1902, il resterait acquis à notre avantage deux autres points:

1) que l'échange de lettres Visconti Venosta-Barrère de 1900, consacrant l'intégrité du vilayet de Tripoli, et posant à la charge de la France, comme limite de sa sphère d'influence par rapport au vilayet, l'observation de la ligne établie dans la Convention de 1899, ne compromet pas les droits territoriaux de la Turquie avant et puis de l'Italie, en tant qu'Etat successeur, éventuellement existants à l'ouest de cette ligne.

2) que reste même intégral dans son efficacité l'engagement français de ne pas intercepter les communications commerciales entre le vilayet de Tripoli et les régions prévues par la Convention franco-anglaise du 21 mars 1899. Ce point est très important, parce que, dans la difficulté à ordonner le centre africain au plan international d'une manière différente de celle créée désormais par l'action décennale d'expansion et de pénétration française et par les stipulations diplomatiques déjà intervenues avec l'Angleterre, il pourrait être au moins accordé à l'Italie des facilités spéciales pour le commerce avec l'intérieur, soit du point de vue douanier, soit en ce qui concerne la liberté d'établir et d'organiser des lignes commerciales, routières, aériennes, etc avec les régions du Centre Afrique."

Je note que, comme le Ministère des Colonies, le Ministère des Affaires Etrangères non plus ne conaissait pas les préliminaires de l'échange de lettres Prinetti-Barrère de 1902. Des recherches exécutées dans les archives ont permis de retrouver un fascicule relatif à la Tripolitaine, contenant la correspondance échangée entre le Ministère et les Délégations royales à l'étranger de janvier 1901 à août 1902; mais il n'y est pas question de négociations pour un nouvel accord avec la France. On n'a pas retrouvé la correspondance après août 1902. Les documents diplomatiques publiés non plus ne mentionnent pas l'accord Prinetti-Barrère.

De toute façon, il faut considérer qu'il est très douteux que les précisions historiques puissent offrir de nouveaux arguments afin de soutenir notre thèse; en 1900-02, la préoccupation de la politique italienne était d'assurer la Libye à l'Italie, plus pour exclure les autres de l'occupation du "quatrième bord" que pour faire de la Libye une colonie avec une fonction politique de pénétration dans le centre africain: en raison de cet objectif limité, il est probable que les dirigeants de la politique extérieure de l'époque ne se soient pas beaucoup préoccupés de l'extension que la future colonie aurait eu, en particulier vers le sud désertique.

Mais aujourd'hui, nous pouvons bien faire valoir auprès des Français tous les arguments qui peuvent être tirés du texte des accords de 1900 et de 1902.

Le Ministère des Colonies a déclaré de toute manière d'être d'accord sur les lignes de la réponse à donner éventuellement au Quai d'Orsay.

Je suis en attente de connaître l'opinion de V.E. sur l'opportunité de la réplique en ce moment ainsi que sur le contenu même du projet de réplique.

Je vous prie d'agréer, Excellence, mes meilleures salutations.

No. 6

SUPPLEMENTARY ANNEX. NO. 6

COMMENTARY ON DOCUMENTS FROM QUAI D'ORSAY ARCHIVES

6.1 Documents Pertaining to G.A. Resolution 392(V) of 15 December 1950.

6.2 Document Revealing French Participation in the Preparation of Libya's Constitution Promulgated on 7 October 1951.

6.3 French Studies Between 1951 and 1955 Concerning Libya's Boundaries.

6.4 Documents Bearing on the January 1955 Negotiations in Paris.

6.5 Border Incidents, Including those Intervening Between the January and July Negotiations, such as the Moya (or Aouzou) Episode.

6.6 Documents Relating to the July-August 1955 Negotiations in Tripoli.

6.7 Documents Concerning Rectification of the Algerian Boundary, Ratification of the 1955 Treaty and Subsequent Attempts to Demarcate the Algerian Boundary.

6.8 Documents Bearing on the Failure of the French Government to Register the 1955 Treaty Under Article 102 of the U.N. Charter.

6.9 Documents Relating to Subsequent Boundary Developments.

6.10 Documents Relating to Maps Showing Libya's Boundaries

6.1 DOCUMENTS PERTAINING TO G.A. RESOLUTION 392(V) OF 15 DECEMBER 1950

1. **Ministre de l'Intérieur à M. le Gouverneur Général de l'Algérie, 5 January 1951.**

2. **Annex to above dispatch of extract of meeting of the Ad Hoc Committee on 13 December 1950 at which Resolution 392(V) was adopted by the Committee.**

3. **Question posed by M. Isorni to the Assemblée Nationale on 25 May 1955.**

Comment: *Documents 1 and 2 bring out the following points:*

- Resolution 392(V) concerned only the delimitation of the boundary east of Toummo.

- West of Toummo, along the Libya-Algeria and Libya-Niger frontiers, France had certain rectifications to propose, which were to be dealt with separately from the negotiations to be undertaken pursuant to the Resolution.

- The "bévue" committed by the French delegation to the Four Power Commission that the U.N. Secretariat's Study, to which M. Isorni referred (Document 3), was fully corrected before Resolution 392(V) was adopted.

In any event, the maps accompanying the 1949 Four Power Commission Report showed the line claimed by France to be Libya's southern boundary, so the "bévue" concerned only the failure to refer to the correct agreements on which the French thesis was based, not to the direction of the 1919 south-southeast line espoused by France.

In spite of the correction made by M. Naudy, France's representative during the 13 December 1950 meeting of the Ad Hoc Committee, adoption of Resolution 392(V) by the General Assembly on 15 December, implied that the U.N. did not regard Libya's southern boundary to have been delimited. France's vote for the Resolution was a formal acquiescence by the French Government in the conclusion that Libya's boundary east of Toummo was as of that date undelimited by international agreement. Such a view had also been expressed by the French Government in 1935 in the Exposé des motifs accompanying the law submitted to the French Parliament proposing ratification of the 1935 Treaty.

6.2 DOCUMENT REVEALING FRENCH PARTICIPATION IN THE PREPARATION OF LIBYA'S CONSTITUTION PROMULGATED ON 7 OCTOBER 1951

Note Prepared by the French Delegation to the U.N. Council for Libya, dated 3 August 1951, addressed to the Directeur Politique.

Comment: The Libyan Constitution contained this provision concerning the boundaries of Libya in its Article 4 (emphasis added):

> "The boundaries of the United Kingdom of Libya are: On the north, the Mediterranean Sea; On the east, the boundaries of the Kingdom of Egypt and of the Anglo-Egyptian Sudan; On the south, the Anglo-Egyptian Sudan, French Equatorial Africa, French West Africa and the Algerian Desert; On the west, the boundaries of Tunisia and Algeria[1];"

The omission of the word "boundaries" as to Libya's southern boundaries from this description of Libya's southern boundaries confirms the conclusion reflected in Resolution 392(v) that no conventional Libyan boundary existed east of Toummo at the time of its independence.

The annexed note reveals that France was closely involved in the development of the Libyan Constitution. Although the note does not discuss Libya's boundaries, it does emphasize the need to enter into a treaty of amity with Libya in the near future. There is no indication in this note or in any evidence yet produced in the present case that the French Government objected to the text of Article 4 of the Libyan Constitution; and its close involvement in the development of the Constitution establishes that the French Government was certainly aware of this provision concerning the boundaries of Libya.

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[1] See, LM, para. 5.397 and Exhibit 3.

6.3 FRENCH STUDIES BETWEEN 1951 AND 1955 CONCERNING LIBYA'S BOUNDARIES

1. Map 1:2,000,000 setting out:

- **Frontière théorique actuelle (Convention 1899).**
- **Frontière proposée par le Colonel Thibaud (June 1946)**
- **Frontière proposée 1953.**

2. Series of documents 1949-1952 concerning the Ghat-Serdelès region.

Comment: A number of important points appear in these documents:

- The dispatch of 27 February 1950 of the Governor General of Algeria contains an interesting history of the establishment by the Ottoman Empire of civil administration at Ghadamès, starting in 1842. This was later to be repeated in the borderlands starting in 1908. The same document reveals that in 1862 the French Mission of MICHER de POLIGNAC signed a commercial and economic convention with the Tuareg, indicating that the French Government did not regard the region controlled by this tribe as res nullius.

- Same dispatch: reference to the Franco-Italian modus vivendi concerning the region of Ghat pending the delimitation negotiations planned for 1914.

- Same dispatch: the importance to the French of geographical and tribal considerations in advancing a claim in this region.

- The French wished to advance a rectification proposal but feared its adverse effect on the negotiation of a hoped-for treaty of amity and alliance with Libya that would assure the French remaining in Fezzan. Accordingly, the French adopted a careful attitude of preserving their position as to Ghat-Serdeles but without raising the issue at the time.

- The erroneous view the French Government had that Resolution 392(v) concerned boundary rectifications.

- The proposal that France argue that the Accord of 12 September 1919 was no longer in effect.

3. Series of documents 1953-1954 revealing French proposals to rectify what they considered to be the boundary east of Toummo (the 1919 south-southeast line).

Comment: Two proposals were made by the French military, based on studies conducted by Colonel Larroque[1]*. The first is depicted on the map referred to in (1) above. It would have drawn the line almost straight east from Toummo (eliminating the triangle running north to the Tropic of Cancer, in Libya's favour, before the line turns northeast to the Tropic of Cancer) in return for englobing all of Tibesti within French territory. East of 20°E it would have conceded to Libya a strip of territory south of the 1919 line, ending the line at 19°N instead of 19°30'N. This proposal gained the support of the Ministre de la France d'Outre-Mer. In February 1954, a revision in this proposal was made by the French military. The line from Toummo would be drawn straight to the intersection of 20°E and the Tropic of Cancer, following otherwise the earlier proposal. This proposal was also supported by the Ministre de la France d'Outre-Mer.*

It is of interest that the two French studies on which these modifications were based relied heavily on geological studies, aside from the military considerations behind proposing not to divide Tibesti.

The important point is that these boundary proposals reveal that Libya's southern boundary was not a clear, well-established line in the view of the French in spite of the official French stance, which adhered to the 1919 line - a line that had been projected by Italy. In 1946, 1948, 1953, 1954 - and later in 1955 - French proposals for fixing a quite different boundary east of Toummo than the 1919 line were being seriously formulated by the French Government.

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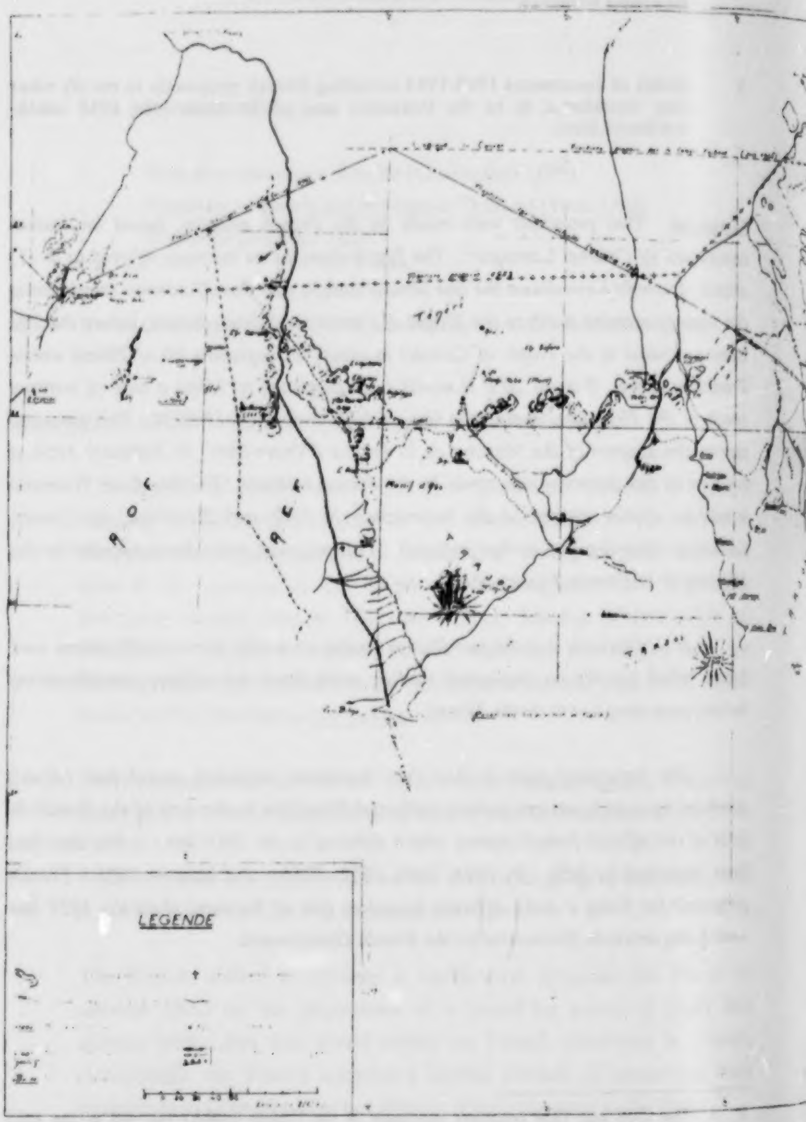
[1] The 1953 and 1954 boundary proposals of the French military (as well as the 1955 proposal) are shown on Maps LR 27A, 27B and 27C, referred to in para. 6.251, Vol. 1, of this Reply.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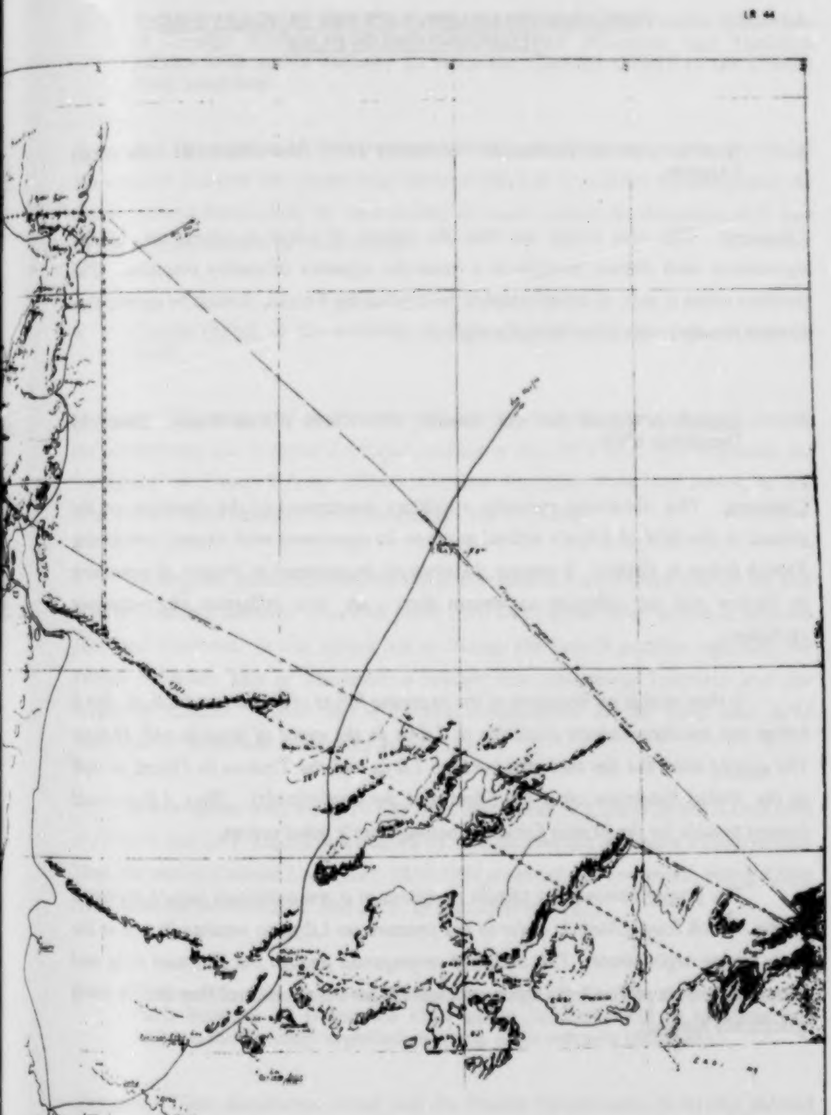
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6.4 DOCUMENTS BEARING ON THE JANUARY 1955 NEGOTIATIONS IN PARIS

1. Note au sujet du Fezzan, 29 November 1954, Gouvernement Général de l'Algérie.

Comment: This note brings out that the refusal of Libya to renew the military agreements with France brought to a head the Algerian boundary situation. The position taken is that, as compensation for evacuating Fezzan, it must be agreed that France remain in the Ghat-Serdelès region.

2. Exposé prepared for the Comité des Chefs d'Etat-Major, dated 20 December 1954.

Comment: This document contains a military assessment of the situation on the ground in the light of Libya's refusal to renew its agreement with France concerning French forces in Fezzan. It stresses the strategic importance to France of remaining in Fezzan and not allowing to remain there only "une influence anglo-saxonne exclusive".

It then makes an inventory of the opposing forces of France and Libya. But it brings out another weapon available to Libya in the event of tension with France. The exposé notes the ties that exist between Libya and the Toubou in Tibesti, as well as the Awlad Suleiman tribes (in Chad and the borderlands). Thus, Libya could foment trouble for the French forces by inciting hostile tribal action.

The exposé summarizes certain measures of a precautionary nature approved by the French Joint Chiefs in order to put pressure on Libya to weaken its will in the forthcoming negotiations. This included propaganda against the Senoussi King and personal pressure put on top Libyan officials (Messrs. Fekkini and Ben Halim being specifically named).

3. Procès-Verbal of 30 December 1954 meeting among the French Ministries of Foreign Affairs, Interior, Outre-Mer and Moroccan and Tunisian Affairs, with senior military participants, Captain O'Neill of the French Navy presiding.

Comment: The purpose of the meeting was to discuss certain proposals concerning "les mesures pouvant être prises pour tenter d'affaiblir la position intransigeante du Gouvernement libyen dans les négociations en cours", which the document then lists - a sort of compendium of "dirty tricks".

4. Procès-Verbal of the meeting on 3 January 1955 at the Joint Chiefs of Staff.

Comment: The subject of the meeting was the Franco-Libyan boundaries. Among the participants was Colonel Larroque, author of the 1953 and 1954 proposals for "modifying" in France's favor Libya's southern boundary from that which, at the time, France maintained to be the boundary - the 1919 line.

Among the points agreed were the preservation on the French side of the line of three locations between Ghat and point 1010 and certain other locations between 1010 and Toummo. It was agreed not to change the French position regarding the alleged boundary east of Toummo: a straight line connecting Toummo and the Tropic of Cancer. (This was a further modification in the 1953 and 1954 "rectification" proposals mentioned in 6.3 (3).)

It was agreed that the 1919 line from the Tropic of Cancer to the intersection of 19°30'N and 24°E should be modified so as to encompass the entire Tibesti massif. Thus, the rest of Colonel Larroque's 1953-1954 proposal was embraced, giving Libya compensation between 20°E and 24°E, as discussed in 6.3(3).

5. Summaries of a series of private meetings of the Libyan delegation in Paris between 31 December 1954 and 6 January 1955 in the intervals between the January negotiations (only a few extracts included).

Comment: These documents reveal that the French Government, by having planted electronic devices or "bugs", listened in to these private meetings at which Libya's reactions and positions were discussed.

6. Draft Procès-Verbal of the January meetings.

Comment: This document has already been introduced in evidence by both sides; but it is so important that Libya wanted to be satisfied that it possessed the authentic document as prepared by the French on 8 March 1955 and submitted to Libya. The document annexed here, which was found in the Quai d'Orsay's files, is clearly authentic. On the upper right-hand corner of the first page appears the notation that on 30 March Mr. Djerbi of the Libyan delegation had examined it.

Article IV of this draft dealt with the matter of boundaries, and the two parties agreed on the same text, which read as follows:

> **"Les deux Gouvernements conviennent de s'en tenir en ce qui concerne le tracé des Frontières séparant les territoires français et libyen aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen."**

The difference between them, as revealed by this document, was that France wished to add the following:

> **"La délimitation exacte sur la carte sera entreprise aussitôt que possible, de manière à être terminée avant la conclusion du traité."**

Libya did not agree with the underlined language and substituted this clause:

> **"Sans toutefois que la conclusion du traité puisse lui être subordonnée."**

Translated into English, this clause read:

> **"But the conclusion of the treaty shall not be linked thereto."**

6.5 BORDER INCIDENTS, INCLUDING THOSE INTERVENING BETWEEN THE JANUARY AND JULY NEGOTIATIONS, SUCH AS THE MOYA (OR AOUZOU) EPISODE

1. **Group of documents, September - December 1954, discussing surveillance of the Libyan-Algerian frontier, alleged encroachments by Libya, prior Italian occupation of certain posts that the French military believed were in Algerian territory under the 1919 Accord, and proposals to reoccupy certain of these posts.**

Among other points brought out are the following:

- Oil companies had started systematic prospecting in Fezzan with positive results, emphasizing the need for a precise delimitation of Libya's western boundary.

- The French military proposed reoccupying certain posts formerly occupied by French forces that might transgress the 1919 boundary between Libya and Algeria, which the French felt was very imprecise, particularly between Ghat and Toummo.

- The French Defence Ministry preferred not to take up the boundary question in the forthcoming negotiations, but recognized that it might be necessary if the negotiations dragged out and other incursions by Libyan forces took place.

- In May 1954, a Libyan police detachment occupied the former Italian post at Arikine (to the west of mountain crests between Ghat and Toummo referred to in the 1919 Accord). When the French occupied this post in 1934, the Italians protested and an agreement was reached in Paris that the French would withdraw and the Italians not reoccupy the post. Nevertheless, in 1937, the Italians established a landing strip there without French protest.

2. **Gouverneur Général de l'A.E.F, au Ministre de la France d'Outre Mer, 10 February 1955.**

This dispatch passes on rumours of a planned Libyan occupation of Aouzou and speculation that Libya intended to push its limits to the 1935 line. The *suggestion had been made by the Governor of Chad that, if evacuation of Fezzan were to be decided in the negotiations under way, acceptance by France should be conditioned on fixing the boundary as defined in the 1899 Declaration.*

However, the Governor General of the A.E.F. expresses his somewhat different views this way:

> "S'il est certain que le futur traité franco-libyen ne devra laisser subsister aucun doute sur le tracé de la frontière, je ne pense pas toutefois qu'il soit opportun pour notre Gouvernement ... de se poser en demandeur pour faire reconnaître des droits qui ne peuvent prêter à aucune contestation."

He added that since the 1935 Treaty became "caduc", Libya's southern boundary remained -

> "... la déclaration franco-britannique du 21 mars 1899 entérimée, en ce qui concerne l'Italie, pas les accords de 1900 et 1902."

The dispatch goes on to say that since the 1935 line was compensation to Italy for its entry into World War I, Libya cannot take advantage of it. It refers to a dispatch from M. Dumarçay in Libya summarizing the results of the January 1955 negotiations in Paris, indicating that the parties had agreed to -

> "S'en tenir aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen."

This implied official recognition by Libya of the 1899 boundary, he said[1]*. As to the need to delimit the line on a map before conclusion of the treaty, the Governor General did not see the point of this:*

> "Je ne vois en quoi peut consister la détermination sur la carte d'un tracé déjà connu, défini par une ligne idéale reliant des points bien déterminés."

On the other hand, if a demarcation of the boundary was involved it would obviously take too long for the treaty to be held up until this occurred, particularly since the I.G.N. would have to be involved.

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[1] It is interesting to note the reference to the 1899 Declaration only, and not to the 1919 Anglo-French Convention.

This, of course, is the same kind of advice given again a few months later by the Governor General in his dispatch of 2 May 1955, referred to in LM, para. 5.437, and found in French Archives Annex, p. 169.

3. Ministre de la France d'Outre-Mer au Ministre des Affaires Etrangères, 24 February 1955 (date of receipt):

- Passes along the A.E.F. dispatch of 22 February 1955 (3. above);
- Requests that Libya be informed that the post of Aouzou had been "reoccupied" by a French detachment.

6.6 DOCUMENTS RELATING TO THE JULY-AUGUST 1955 NEGOTIATIONS IN TRIPOLI

1. The "Avant-Projet" brought from Paris by M. Dejean to serve as the basis of the resumed negotiations; various amendments to various articles.

Article 3 of the draft concerning boundaries modified the formula set out in Article IV of the draft Procès-Verbal of the January meetings so as to read as follows:

> "Les deux Hauts Parties Contractantes reconnaissent que les frontières séparant le territoire de la Libye d'une part, des territoires de la Tunisie, de l'Algérie, de l'A.O.F. et de l'A.E.F., d'autre part sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye."

Among the various accompanying draft articles and papers are the following:

- A draft entitled "Eléments devant faire l'objet d'un échange de correspondance entre les Gouvernements français et libyens au moment de la conclusion du Traité ..." The first matter noted is:

> "Delimitation et abornement des frontières franco-libyennes."
>
> "La Délimitation des frontières franco-libyennes est fixée par les documents figurant en annexes à la présente lettre.
>
> L'abornement sur le terrain de la frontière entre Ghat, Ghadamès et Toummo sera entrepris, d'accord entre les hautes parties contractantes dès la mise en vigueur du traité ... ."
>
> (A provision of settling disputes resulting from the "opérations d'abornement".)

*Comment**: Apparently, Article 3 was to be supplemented by letters exchanged at the time the treaty took effect dealing with both delimitation and demarcation. Thus, it was the letters that were to provide for delimitation; Article 3 established the agreed standard. Only the Ghadamès-Ghat-Toummo segment was to be demarcated. Annexed to the letter were to be the various documents which "fixed" the delimitation* *of the boundaries - presumably it was not merely a reference to them but their texts were annexed ("en annexes").*

There is another interesting page among these documents, entitled "Frontière: (nouvel article)". It is not entirely clear how this amendment was to operate, but its text is as follows (underlined as in text):

> "L'article devrait être complété ainsi: '... dans un délai de 6 mois à dater de la mise en vigueur du présent traité, et, en tout cas, avant le retrait des forces françaises du Fezzan. Cette délimitation maintiendra en territoire français le trouée de Takharkhouri, le col d'Anaï, la Gara Derouet et Djemel (côte 1.010) et le puits de Toummo auquel cependant les ressortissants libyens auront accès.'"
>
> "A l'est de Toummo la délimitation de la frontière fera l'objet d'une convention ultérieure entre les Hautes Parties Contractantes."

At the bottom of this page is the following note:

> "Ceci nous donne les points-clefs entre Ghat et Toummo, mais ne nous donne pas l'ensemble du massif du Tibesti demandé par le Comité des Chefs d'Etat-Major. Cette question est laissée en suspens."

There is a third draft of the boundary provisions, also entitled "nouvel article", which reads as follows:

> "Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant le territoire de la Libye d'une part, des territoires de la Tunisie, de l'Algérie, de l'A.O.F. et de l'A.E.F. d'autre part sont celles qui résultent des actes internationaux en vigueur à la date de la constitution de Royaume-Uni de Libye. Ces frontières figurent sur la carte jointe en annexe au présent traité.
>
> La délimitation, sur le terrain, de la frontière entre Ghat et Toummo sera effectuée, d'accord entre les Hautes Parties Contractantes, dans un délai de (left blank) à dater de la mise en vigueur du présent traité."

Comment: It may be that the page just mentioned (with words underlined) was intended to complete and modify this draft, for it fills in the blank and amplifies the delimitation between Ghat and Toummo, while leaving to the future the delimitation east of Toummo.

2. Minutes of meeting of 27 January 1955 at Secrétariat Général Permanent de la Défense Nationale.

The participants examined an "avant-projet" of the treaty and certain new articles to include in the treaty. The text of Article 3 as in the draft brought by M. Dejean to Tripoli in July was as modified at the meeting. It is clear that it was contemplated annexing a map to the treaty; as a result the conferees did not think it was a good idea to mention specifically the three points in the Ghat-Toummo sector (Takharkhouri, Anaï, Derouet-el-Djemel). As to the deadline for demarcation between Ghat and Toummo, flexibility was suggested depending on the extent of agreement in this region on the map or on aerial photographs.

3. Ministre de la France d'Outre-Mer to the Minister of Foreign Affairs, 10 February 1955, which refers to an earlier dispatch on the same subject of 27 July 1953, also annexed.

These dispatches set out the view of the Ministry and of the A.O.F. and A.E.F. as to how the various frontier problems concerning the "régime frontalier" (as distinguished from the boundary) should be dealt with - the sorts of matters ultimately covered in the 1955 Convention. As early as 1953, the general content of the 1955 Convention had thus been set out, which indicates that the Convention did not confirm the existence of a boundary, but like these proposals of July 1953 and February 1955, set forth how cross-boundary relations should be regulated - a frontier modus vivendi - in contemplation of the fixing of a boundary. In fact, much of the content of these proposals and of the 1955 Convention appears to have already been put into practice by Libya, France (that is, Algeria) and the French territories adjoining Libya.

The February 1955 dispatch ends with this statement:

> "Telles sont les propositions qui pourraient servir de base à l'établissement d'un 'modus viverdi' frontalier entre la France et la Libye. Elles supposent que la frontière ne donne lieu à aucune contestation."

The dispatch goes on to observe that the boundary line between Ghat and Toummo had never been demarcated. East of Toummo:

> "Le parcours Toummo-Tibesti-Soudan est representé par une ligne idéale qui ne s'appuie sur aucun accident géographique précis. Il ne saurait cependant être question de remettre en discussion les arrangements internationaux intérieurs à 1935 ... ."

These "arrangements" are then set out:

- the Franco-Italian Accord of 12 September 1919 for the Ghat-Toummo segment of the boundary;

- the 1899 Anglo-French Declaration for the rest of the boundary ("qui dans son art. 3, définit la limite de la zone française dans le Tibesti").

The final paragraph of the dispatch states that:

> "Ces deux textes doivent servir de base à la délimitation de la frontière entre les possessions françaises d'A.O.F. et d'A.E.F. et la Libye, les accords LAVAL-MUSSOLINI de 1935 n'ayant pas été ratifiés par les Parlements respectifs et ayant été dénoncés par l'Italie en 1935."

It is significant that the dispatch does not say that these international agreements had delimited Libya's boundaries: they were to serve as the basis of such a delimitation.

4. Note sur la Frontière Meridionale de la Libye, A.E.F., February 1955.

This note complements the dispatch of the Ministre de la France d'Outre-Mer of 10 February 1955 just discussed in Document 3 above. It summarizes the 1899 Declaration and the 1900-1902 Accords as well as the agreements following World War I under which Italy was compensated under Article 13 of the 1915 Treaty of London. (It wrongly states that the 1935 Treaty became null and void because the Italian Parliament failed to ratify it: both the French and Italian Parliaments had overwhelmingly approved the Treaty but the ratifications which they authorized were not exchanged, as called for in the Treaty.)

The note then jumps to the following conclusion, without explanation:

> "Par conséquent la frontière méridionale de la Libye reste bien définie par la déclaration franco-britannique du 21 mars 1899 entérimée, en ce qui concerne l'Italie, par les accords de 1900 et 1902."

The note proceeds to take the position that no modification of the frontier should be considered and that a modification was not justified either in fact or law. (This may have been directed at the military proposals for "rectifying" Libya's boundaries both on the west and on the south.) It ends with this recommendation:

> "Par conséquent si le traité franco-libyen doit faire allusion au problème des frontières il ne saurait que sanctionner formellement celles qui résultent de l'accord franco-britannique du 21 mars 1899, sauf à stipuler qu'il sera procédé dans un délai à déterminer à sa délimitation sur le terrain."

Comment: This note again confirms that the A.E.F. was fearful of raising the issue of Libya's southern boundary at all, particularly by proposing its "rectification". If it had to be mentioned at all in the treaty, it should only be to approve formally those boundaries resulting from the 1899 Declaration. In short, the boundary question should not be the subject of any negotiation.

5. Ministre de la Défense Nationale et des Forces Armées to the Ministre des Affaires Etrangères and the Ministre Délégué à la Présidence du Conseil, 14 April 1955.

This dispatch sets out the military point of view as to where the boundary between Ghat and Toummo should be drawn. It has also illustrated it on a map. The three points ultimately included in Annex I of the 1955 Treaty are stressed as essential to obtain within French territory.

As to the other portions of the Libyan boundary, it is stated that they have been determined with precision, including between Ghadamès and Ghat as well as east of Toummo. Although no "rectification" is necessarily required, the note suggests that should the opportunity arise certain proposals set out in an Annex might be considered.

The Annex set out proposals for modifying the Ghadamès-Ghat sector of the boundary as well as the alleged boundary east of Toummo. (Also illustrated on a map.) The proposal to incorporate all of the Tibesti massif in French territory is again made. (See 6.3 for the earlier proposals of 1953 and 1954.[1]*) This revised proposal would leave intact the segment between Toummo and the Tropic of Cancer. The line would then follow the Tropic east from 16°E to 20°E. Then it would follow 20°E south to a feature identified as the falaise de la Gara Abou N'Doua (south of the 1919 line) and then turn south-southeast parallel to, but south of, the 1919 line, intersecting 24°E at about 19°N rather than 19°30'N. Thus, Libya would be compensated in that region for what it had "lost" in the north. (This line is also illustrated on a map.) One objective of this change would be to place most of the important automobile road Aouzou-Zouma-Tekro, which is the only link between the east and west of Tibesti, within French territory, although the French military proposal would leave the road passing by Zouma available to both Libya and France.*

6. Ministre Délégué à la Présidence du Conseil to the Ministre des Affaires Etrangères, 3 May 1955.

This dispatch is a follow-up to the one just discussed in Document 5 above, concurring in the views there expressed, including the proposal of "rectifying" the boundary in the Tibesti area (as shown on the map) "dans la mesure où vous estimerez possible de présenter utilement cette proposition". In any event, both parties should be able to use the Aouzou-Zouma-Tekro road.

The dispatch goes on to mention the concern the Ministre de la Défense Nationale et des Forces Armées had expressed over the possibility that the British might consider as valid the 1935 line. The dispatch recommends seeking the support of France's allies in this regard, particularly in the light of recent indications of mineral deposits in the Tibesti area.

7. Series of dispatches concerning indication of mineral deposits in the Tibesti area: 3 May, 6 May, 9 May and undated letter and sketch map.

Apparently, a mission had recently been sent into the Tibesti region by the Direction des Mines et de la Géologie d'A.E.F. and had just returned. These

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[1] This 1955 proposal by the French military is shown on Map LR 27C referred to in para. 6.251, Vol. 1, of this Reply.

documents discussed the mission's findings. Earlier scientific missions had also made investigations in this area recently: a German mission under Dr. Meckelein for the Geographical Society of Berlin (March 1955); a petroleum exploration by Esso Standard (1954-1955); an Italian scientific mission of the Anthropological Institute of the University of Florence. Both Esso and the Italian mission had requested permission to penetrate into Tibesti.

The 9 May letter concerns a request by the Compagnie de Recherches et d'exploitation de pétrole en Algérie concerning the delimitation of the Libya-Algeria boundary.

The sketch map shows areas in Tibesti where signs of uranium deposits had been noted. (It may be presumed that these indications did not end arbitrarily at the 1919 line; and thus may have been an added reason for seeking to "rectify" the line, by pushing it north to the Tropic of Cancer, in this region.)

8. Ministre des Affaires Etrangères to the Ministre de la France d'Outre-Mer, 11 May 1955.

The question addressed was whether the French should occupy Toummo. The advice was against doing so for fear of provoking a Libyan reaction to which France had no valid defence. It was pointed out that the map referred to in the 1902 Accord showed Toummo to be in Tripolitania; and until World War II, in practice, Toummo had been considered Italian.

9. Ministre des Affaires Etrangères to the Ministre Délégué de la Présidence du Conseil, 14 May 1955.

This important dispatch sets out the official French position on a number of points in connection with the next phase of negotiations:

- Delimitation of the boundaries was among the minimum conditions of considering the evacuation of Fezzan.

- The three points in the Ghat-Toummo segment referred to by the military as essential should be specifically fixed in the treaty, although difficulty in getting Libyan agreement to the Col d'Anaï was expected.

- An effort would be made to shift the boundary between Ghadamès and Ghat so as to follow the most easterly caravan route, leaving on the Algerian side the *massif* of Edjélé (whose oil prospects had suddenly become of great interest). However, strong Libyan resistance was anticipated since this was not in accord with the text of the 1919 Franco-Italian Accord.

- East of Toummo, the Minister of Foreign Affairs found the question of "rectification" more delicate:

> "La rectification de la frontière entre Toummo et le Soudan anglo-égyptien pose des problèmes plus délicats en raison des prétensions qu'elle ne manquerait pas de susciter de la part des Libyens, déjà tentés de contester le tracé actuel dans cette région."

The best effort would be made provided no sectors were abandoned to Libya where indications of valuable mineral resources had been found.

- The French Government had intervened with the British to divert an expedition by a tank brigade from the region of Tibesti since it might be seen as support for any claims of Libya based on the 1935 Treaty.

10. Two documents concerning technical preparation for the forthcoming negotiations by collecting and preparing maps: minutes of an 11 May 1955 interministerial meeting (13 May); note of the Foreign Ministry, 24 May 1955.

The inadequacy of existing maps was recognized, particularly as to the Ghat-Toummo sector, where the need urgently to take aerial photography was underlined and funding was immediately to be sought.

In particular, the Ministry of Foreign Affairs started a search for official Italian maps of 1935 and 1926.

Comment: The official 1941 Italian map has also been located in the Quai d'Orsay archives. Both it and the 1926 Italian map showed nc boundary east of Toummo. The French Government was aware of both these maps, although they are not produced by Chad in its Map Atlas.

11. Formal instructions given to Colonel Seze by the Ministry of National Defence on 12 July 1955 on the eve of his departure to Tripoli as part of the French delegation to resume negotiations:

- No treaty should be signed unless accompanied by a precise agreement on the delimitation of the boundary - the acceptance by both parties of a precise text.

- The text of the 12 September 1919 Accord constitutes a precise text valid to govern the Ghadamès-Ghat portion of the boundary. Since this text cannot be questioned, two possibilities exist:

  (i) After ratification of the treaty, if this text is explicitly adopted, demarcation can take place, and it is then that interpretations to France's advantage may be sought.

  (ii) Attach now to the text the interpretative documents that may make possible at the demarcation stage the achievement of France's purpose.

- Instructions will follow as to the Ghat-Toummo segment.

- East of Toummo, the valid text is the 1902 Accord adopting the terms of the 1899 Declaration.

- Much as France hopes not, it is possible the Libyans will force a discussion of points of detail of the boundary.

- Because of the importance of potential mineral deposits, a geological specialist will be sent to advise Colonel Seze and the French delegation.

12. Ministre de la Défense Nationale et des Forces Armées au Ministre Délégué à la Présidence du Conseil, 12 July 1955.

This dispatch sets out the French military position on the eve of resuming negotiations. It makes withdrawal from Fezzan subject to a number of conditions, one of which is delimitation of the boundaries.

13. Ministre de la France d'Outre-Mer to the Minister of Foreign Affairs, 20 July 1955.

The Minister writes in regard to a recent meeting at the I.G.N. in which his Ministry was not invited to participate. Therefore, he states his position which "n'a pas évolué":

> "J'entends m'en tenir aux dispositions des accords franco-italiens de 1919 et de la déclaration franco-britannique de 1899, et ne saurais admettre que la définition de la frontière franco-libyenne puisse être remise en discussion (referring to his dispatch of 10 February, discussed in (3) above).

The Minister notes that the A.O.F. and A.E.F. have each been invited to send an observer to Tripoli, which he intends to pass on to the Governor Generals.

14. Reply by the Ministre des Affaires Etrangères of 23 July to the previous dispatch of 20 July.

The Minister of Foreign Affairs reports that negotiations resumed on 18 July. He then states the following:

> "J'ai l'honneur de vous confirmer à cette occasion que les instructions données à notre Délégation lui prescrivent de baser son attitude, dans la discussion de la délimitation des frontières franco-libyennes, sur les textes internationaux en vigueur au moment où a été proclamée l'indépendance libyenne (24 Décembre 1951), c'est-à-dire la déclaration franco-britannique du 21 mars 1899, admise par l'Italie le 1er novembre 1902 (échange de lettres Barrère-Prinetti et interprétée par la Convention franco-britannique du 8 septembre 1919, ainsi que les accords franco-italiens du 12 septembre 1919."

The dispatch goes on to say that there had been no thought of modifying this position; the meeting of 20 July referred to had only been for the purpose of bringing up to date the maps to be used by the French Delegation.

The "régime frontalier" (the subject of the 1955 Convention) would probably be dealt with only at the end of the negotiations; and the representatives of the A.O.F. and A.E.F. would be fully consulted in that connection.

15. Two Telegrams of 9 August 1955: Dumarçay (for Dejean) to the Ministre délégué.

M. Dejean met on 8 August with M. Ben Halim, who had given the agreements to the King. The Ghat-Toummo boundary was still not resolved even as to the three points through which the line was to pass: Ben Halim had not agreed to Takharkhouri. Dejean expected Ben Halim to give in on this point and that signing would take place the next day, 10 August.

The second telegram reveals that M. Dejean played this card - to obtain the third point - at the very end and said that the Treaty would not be signed unless the point was agreed. Ben Halim capitulated.

6.7 DOCUMENTS CONCERNING RECTIFICATION OF THE ALGERIAN BOUNDARY, RATIFICATION OF THE 1955 TREATY AND SUBSEQUENT ATTEMPTS TO DEMARCATE THE ALGERIAN BOUNDARY

These documents may be divided into two groups: those predating the decision of the French Government to submit the 1955 Treaty to the French Parliament - a decision not taken until the beginning of November 1956 (Part I); and those after that date (Part II). Only some of the documents annexed are discussed below.

PART I

1. Telegram from M. Dumarçay to the Ministère des Affaires Etrangères, 31 January 1956.

Unlike the French Government, the Libyan Government submitted the Treaty to its Parliament for approval on 14 February 1956. An Explanatory Memorandum accompanied the submission (see, Exhibit LR 3). M. Dumarçay's telegram of 31 January 1956 indicates that the Libyans were interested in knowing when the French would do likewise. See, also, note of the Ministry of Foreign Affairs of 21 February 1956 (Document 2), to which the following note was attached. (It will be recalled that the Government of Mendès-France had just been replaced.)

2. Series of notes of the Direction Générale Politique concerning the problems posed if the 1955 Treaty is not ratified: 18 June, date illegible, 8 September and 11 October 1956.

The note of illegible date brings out the fact that:

> "... un arrangement frontalier est indispensable si nous voulons conserver le très important gisement pétrolier récemment découvert à Edjélé, et dont la possession est vitale non seulement pour l'approvisionnement futur de la France en pétrole mais aussi pour le développement économique de l'Algérie."

The note then goes on to suggest how maximum pressure can be placed on Libya: -

> "... le chef de notre délégation à Tripoli ferait savoir confidentiellement à M. Ben Halim que le débat de ratification dépendra dans une large mesure du résultat des pourparlers sur la délimitation de la frontière; en d'autres termes, il lui indiquerait que si ces pourparlers aboutissaient à une solution conforme à nos voeux, le Gouvernement français serait prêt à s'engager à accélérer dans toute la mesure du possible la procédure de ratification et à user de toute son autorité pour faire prévaloir cette solution."

__Comment__: This brings out that had the Edjélé field discovery not been made, and had the Libyan delegation not conceded to France the rectification of the boundary assuring that Edjélé lay on the Algerian side of the line, the 1955 Treaty would probably not have been ratified, although the evacuation of Fezzan would most certainly have been brought to the attention of the Security Council. This latter point is brought out in the 8 September note.

This series of impassioned pleas to the Minister of Foreign Affairs to push ratification of the Treaty shows how precarious such an outcome was until the late fall of 1956, well over a year after signature and well after Libyan ratification had occurred. As the date of 30 November 1956 for evacuation of Fezzan under the 1955 Treaty approached, the French Foreign Ministry became increasingly frantic.

The Dronne Motion d'Ajournement, which is annexed following the 16 September dispatch, brings out the difficulties facing ratification at the time.

PART II

3. Telegram of 13 November 1956: Dumarçay to Quai d'Orsay.

This message stresses the tie between evacuation of Fezzan and satisfactory delimitation of the Algerian boundary.

4. Report of 13 November 1956 on ratification of the 1955 Treaty prepared by the Direction Générale des Affaires Politiques.

The hand-written note on this document indicates that it was used as the basis of Foreign Minister Faure's report to the French parliament. It indicates that even by 13 November the Treaty had not been submitted to the Assemblée Nationale.

The note mentions that the 1955 Treaty had -

> "... réglé à notre avantage les problèmes qui se posaient dans les secteurs méridionaux et ayant obtenu, en particulier, la reconnaissance de l'appartenance française du Tibesti."

As to the Ghadamès-Ghat sector: -

> "... où d'importants gisements pétroliers ont été récemment décelés, notre intention est de demander au gouvernement libyen de consacrer dès maintenant, par un échange de lettres, la définition française de la frontière algéro-fezzanaise plaçant les zones les plus intéressantes en territoire algérien, en dépit des dispositions peu favorables que contiennent, à ce sujet, les textes internationaux ... ."

The precise boundary to which Libya must agree is then spelt out.

__Comment__: This is a clear admission that, as to the Algerian boundary, France refused to respect the provisions of Article 3 and sought a rectification.

The note ends by saying that Libya's acceptance of these terms was a prior condition of withdrawal from Fezzan; and it refers to the economic and military advantages gained in the 1956 negotiations as compensation for French evacuation.

The precise delimitation to which Libya must agree in advance of ratification and evacuation was then transmitted to Tripoli by telegram dated 14 November 1956.

5. Note dated 23 November 1956 prepared by M. Joxe, Secrétaire Générale du Ministère des Affaires Etrangères.

This note summarizes the situation. It contains an interesting comment on the degree of preparation and the competence of the Libyan negotiating team even during the 1956 negotiations:

> "... nos interlocuteurs n'avaient qu'une connaissance insuffisante des régions en cause; ils étaient incapables de formuler clairement leurs revendications et encore moins de les arrêter sur une carte; ils ne possédaient ni dossiers ni documents, se bornant à se faire l'écho de vagues témoinages et de prétentions exagérées dont ils ne parvenaient pas à faire une synthèse cohérante."

It then recounts in some detail the way the negotiations had proceeded, in this case the Libyans being assisted by a Swiss expert - negotiations described by M. Joxe as "une négociation orientale".

In this note, M. Joxe makes a curious reference (on page 5) to another element in these negotiations that was not put on the table:

> "... sans parler évidemment de l'élément déterminant que constituent les tractations latérales et secrètes que vous savez. Mais cet élément ne pourra jouer qu'après cette sorte de 'baroud d'honneur' que sont nos négociations."

The note goes on to say that the Président du Conseil had to go through the motions of a serious negotiation in front of his critics and enemies.

The note ends by saying:

> "J'ajoute que plus l'on fera le silence à Paris sur les rechasses pétrolières du Sahara, mieux cela vaudra."

6. Dispatch of 30 November 1956 from French Military Attaché, Tripoli, to the Chef d'Etat-Major Général des Forces Armées.

This document contains a number of interesting points:

- The imprecision of the 1919 Accord worked to France's detriment.

- So did the lines shown on France's own maps.

- By accepting the 1955 Treaty, France had no basis for making the delimitation of the Algerian boundary a condition of evacuation of Fezzan.

It goes on to point out that the new Algerian boundary exceeds the boundary shown on French maps in most of the northern part, to the extent of well over 1,500 km^2. It also indicates that important questions remained to be resolved in delimiting the Ghat-Toummo sector.

7. I.G.N. to Ministre des Affaires Etrangères, 22 January 1957.

This document discusses the planned demarcation of the Algerian boundary - by the so-called the "Lepin mission". Plans were made to start in the Edjélé area by 9 February. It is apparent that the Lepin mission was to go ahead and place boundary pillars and let the Libyan Government know what they were doing in the event they wished to participate.

Comment: This was a unilateral demarcation by France using the I.G.N.

8. Dispatch of 12 October 1957: Ministre du Sahara au Ministre de la Défense Nationale.

This document shows that major questions concerning the boundary line between Ghat and Toummo remained to be resolved. This was a factor contributing to the border incidents then occurring, as is also brought out in the dispatch of 10 October 1957 from the Minister of Foreign Affairs to the Minister of Defense, which discusses certain contradictions between the French position and the 1919 Accord, adding the following remark:

> **"Vous conviendrez avec moi qu'au cas où la Libye soumettrait l'affaire à une juridiction internationale, une pareille contradiction serait difficile à expliquer, d'autant plus qu'il ne nous serait pas possible d'invoquer, au regard d'un accord international comme l'arrangement de 1919, une interprétation unilatérale comme celle du 21 septembre."**

The reference to 21 September is to a document (also included in this Annex) that set out the Ministre du Sahara's position as to the line.

The dispatch mentions that Libya had proposed proceeding with the work of the mixed commission to investigate the 3 October frontier incident. The French hoped to use the Commission to look into an earlier incident (16 September) and to *demarcate this boundary (which involved major questions of interpretation in spite of the designation of three points in Annex I of the Treaty).*

9. Ministre de la Défense au Ministre des Affaires Etrangères, 14 Octobre 1957.

Without entering into detail, this document brings out the fact that there were important divergences in the Ghat-Toummo line between the boundaries shown on various French maps and instructions issued to the military commanders in the field.

10. Dispatch of 13 April 1961: M. Sebilleau, French Ambassador to Libya, to M. Couve de Murville, French Foreign Minister.

The subject here is Libya's announcement that, having recognized the Government of Algeria as sovereign over its territory, it would not pursue the putting into effect of the 1956 agreement rectifying its boundary with Algeria but would wait to resolve these matters with independent Algeria.

The dispatch discloses that the Libyan delimitation commission had in 1958 refused to accept France's unilateral demarcation, and further, that Libya had never ratified the 1956 agreement. Moreover, certain Libyan deputies and journalists maintained that Edjélé had been "stolen" from Libya with the complicity of M. Ben Halim.

The dispatch then proceeds to evaluate the strength of Libya's position, pointing out the extreme weakness of Libya. (1.2 million people inhabiting 1.2 million km^2.) However, Libya had become jealous to protect its oil; and the note suggests how fortunate France was not to have placed the Edjélé pipeline in Libyan territory. It adds this interesting comment:

> "Je sais très bien que les Libyens se mordent les doigts de n'avoir pas essayé de discuter avec nous la question de leur frontière avec le Tchad et le Niger quand il en était encore temps; ils comprennent maintenant que les "frères africains" se montreront des adversaires encore plus difficultueux."

__Comment__: There could be no clearer statement that the French Ambassador to Libya regarded, in April 1961, the Libya-Chad boundary a matter still to be negotiated.

6.8 DOCUMENTS BEARING ON THE FAILURE OF THE FRENCH GOVERNMENT TO REGISTER THE 1955 TREATY UNDER ARTICLE 102 OF THE U.N. CHARTER

These documents, dated between 21 October 1961 and 27 February 1963, modify and complete the understanding Libya had concerning France's failure to complete the registration of the 1955 Treaty under Article 102 of the U.N. Charter (see, LM, para. 5.564, et seq., and LC-M, para. 3.129, et seq.).

The question of registration did not come up until October 1961: the note pour le Service Juridique dated 21 October 1961 reveals that the Treaty had not as of that time been transmitted to the U.N. Secretariat for registration, more than six years after the 1955 Treaty had been signed. Chad had already achieved independence.

Comment: The 1956 Agreement concerning the Algerian boundary had been registered, effective 19 May 1958, over three years before. This is curious in itself for, as brought out in Annex 7 (13) above, Libya had not ratified the 1956 Agreement.

The Service Juridique first raised the question, on 25 October 1961, whether there was any reason of a political nature not to proceed with registration. On 20 June 1962, the Ministre des Affaires Etrangères instructed its U.N. Mission to take the necessary steps, and this was done on 3 July 1962. On 20 July, the U.N. Secretariat pointed out that one document was missing - a declaration certifying that the text submitted included all reservations made by the parties, indicating, as well, when and how the Treaty entered into force.

At this point a problem was revealed: two secret letters had been exchanged between Messrs. Dejean and Ben Halim and, naturally, not furnished to the U.N., posing what seemed to the Quai d'Orsay to be a delicate question, even if the letters did not constitute, properly speaking, reservations to the Treaty. It was felt necessary to consult Libya lest one day France be accused of having made such a declaration without Libya's consent, (see, 27 August 1962 dispatch).

The French Chargé d'Affaires reported on 26 September that he had been able to take the matter up with Prime Minister Ben Othman, who requested his Foreign Minister to discuss it with the new French Ambassador, due to report on 15 October 1962. A dispatch of 13 November 1962 of the French Foreign Ministry indicates that the French Ambassador was directed to get written confirmation from *the Libyan Government that the secret letters did not modify the provisions of the Treaty and that, therefore, the text contained all reservations of either party.*

On 29 November 1962, the French Foreign Ministry sent a note verbale to the Libyan Embassy in Paris requesting a Libyan statement that it had no objection to France making the declaration concerning reservations required by the U.N. Secretariat. The same day the First Secretary of the Libyan Embassy in Paris, Mr. Elatrash, was called over to the Quai d'Orsay and the matter explained to him. He undertook to consult his Government but he made an additional remark, according to the French dispatch:

> "...il a toutefois ajouté, à titre personnel, que l'enregistrement du traité conclu en 1955 [over 7 years before and 2 years after Chad's independence] ne lui paraissait pas s'imposer en raison du caractère caduc de certaines des dispositions de ce texte. Il lui semblait que la conclusion d'un nouveau traité serait préférable."

The following paragraph then follows, which appears to express the point of view of the French Foreign Ministry and not Mr. Elatrash:

> "Une telle solution présenterait pour la Libye des inconvénients certains en ce qui concerne notamment le tracé des frontières avec des pays sur lesquels la France n'exerce plus sa souveraineté."

On 18 February 1963, the Libyan Foreign Ministry addressed a note verbale to the French Ambassador in Tripoli stating that Libya had no objection to the French Government making the required declaration in order to register the 1955 Treaty. Apparently, Libyan agreement had not been anticipated, for on 20 February the responsible office of the French Foreign Ministry expressed this view:

> "Au moment où la négociation que nous menons avec le Gouvernement libyen vise à remettre en cause en fait, sinon en droit, certaines des obligations que nous avons souscrites dans le Traité, sans contrepartie véritable de la part de ce Gouvernement, il paraît particulièrement inopportun d'insister auprès de celui-ci pour qu'il produise une attestation certifiant que le texte du Traité soumis à l'enregistrement comprend toutes les réserves faites par les parties contractantes et indiquant la date et le mode de son entrée en vigueur."

The dispatch recommended putting off for the moment the registration procedures.

Comment: Apparently, despite the Libyan go-ahead, the advice just cited was followed. No further action was taken by the French Government, even after a reminder in 1972 from the Secretariat.

6.9 DOCUMENTS RELATING TO SUBSEQUENT BOUNDARY DEVELOPMENTS

1. Message of 21 October 1957.

This brings out the distinction in the Ghat-Toummo region between a boundary not yet determined and a "limite opérationelle".

2. Note of 15 July 1958.

As in the case of virtually all of the French notes and analyses following the signing of the 1955 Treaty, the text of Article 3 is not accurately stated, but rather it is assumed that "les frontières entre les deux pays sont définies par les accords en vigueur", etc., which is not what Article 3 says. Moreover, it was apparent that no definition, in fact, resulted along Libya's boundary with Algeria, which was the boundary of primary interest.

As to the Ghadamès-Ghat sector the note reveals that very little progress had been made in arriving at a precise line; and Libya had not even publicly mentioned the 1956 Agreement. Between Ghat and Toummo the story was much the same. East of Toummo the following was said to be the situation:

> "La frontière dans ce secteur résulte de divers documents diplomatiques repris dans l'Annex I du traité de 1955. Elle est définie par deux lignes géométriques tracées entre des points déterminés par leurs coordonnées astronomiques. Aucune difficulté ne devrait donc se présenter dans cette région."

The rapid demarcation of the boundary to Toummo was recommended in the light of boundary incidents that had occurred there.

3. Editorial in a Benghazi newspaper and commentary on it by the French Chargé d'Affaires in Libya, 12 September 1958.

The editorial reported declarations of allegiance by tribes in Chad to the Senoussi King of Libya. The Chargé observed that the Senoussi doctrine served as a pretext for Libyan claims over Chad, more or less overt.

4. Procès-Verbal of 3 January 1960.

This document refers to the unilateral placement by I.G.N. officials of a boundary pillar at Edjélé, recorded by M. Lepin. This was one of the unilateral demarcations carried out by the French in 1957 in the course of the Mission Lepin conducted by the I.G.N.

5. Note of 5 February 1960.

This is another updated summary of relations between Libya and France. It reveals that the fixing of the boundaries between Ghadamès and Ghat and between Ghat and Toummo had been further delayed by Libya as a result of the Algerian affair:

> "L'affaire algérienne pèse également sur le règlement du problème de la délimitation de la frontière franco-libyenne. Malgré l'accord de 1956, le Gouvernement fédéral s'est toujours refusé à faire procéder à l'abornement de la frontière délimitée entre Ghadamès et Ghat et ne manifeste aucun empressement à négocier la fixation du tracé frontalier du sud de Ghat."

Comment: The 1956 Accord was a rectification of the 1919 Accord boundary between Ghadamès and Ghat. It had not been submitted to Libya's Parliament for ratification, and Libya was refusing to put it into effect. Between Ghadamès and Ghat there were also serious problems to resolve as to the course of the boundary in spite of the agreement on three points in Annex I to the 1955 Treaty, which had the effect of changing that boundary as well.

Thus, 4½ years after the 1955 Treaty had been signed, the key part of the boundaries between Libya and France and French territories had not been fixed.

The note also mentions that a sizeable contingent of Libyans who had fled south from the Italians had returned to Fezzan.

6. Note of 11 February 1960.

Apparently, the Libyan Ambassador in Paris (Ben Halim) had suggested that Libya was seeking to take up again the question of the Franco-Libyan boundary. The note points out the unresolved state of both sectors of the Libyan boundary with Algeria. As to the boundary east of Toummo, the document says the following:

> "L'abornement de la frontière allant de Toummo au Soudan, définie en 1919 et 1955 par deux lignes droites, ne doit soulever aucun problème."

The note is not enthusiastic about Libya's idea, particularly since Ben Halim also suggested that certain modifications in the Ghadamès-Ghat sector, from what was agreed in the 1956 Accord, would be in order. The note goes on to suggest the following:

> "Il ne paraît pas possible ni souhaitable de paraître accepter la remise en cause de l'accord qui a été accepté du côté français. Toutefois, si nous obtenions du Gouvernement libyen l'assurance qu'il est prêt à négocier la délimitation du secteur Ghat-Toummo, frontière soudanaise, et à accepter de reconnaître l'abornement auquel nous avons procédé unilatéralement dans le secteur Ghadamès-Ghat, nous pourrions peut-être ne pas nous opposer à de légères rectifications sur des points qui ne paraissent pas présenter pour nous un intérêt essentiel." (Emphasis added.)

Comment *The plain meaning of this paragraph is that negotiations between Libya and France to delimit Libya's southern boundary (Ghat - Toummo - Sudan) had not yet taken place.*

7. Dispatches of 12 and 31 August 1960 and illustrative sketch map.

These documents concern the Libyan boundary with Niger. The oil company PETROPAR had suggested "une variante" to make in the boundary. These documents and the map show the wide difference between Libya and France remaining in this part of the boundary between Ghat and Toummo, and lying east of point 1010 that had been agreed in Annex I to the 1955 Treaty.

8. Note of 12 September 1960.

This document discusses Libya's refusal to proceed to exactly delimit and demarcate the Algerian boundary between Ghat-Toummo.

The boundary with Niger between point 1010 to Toummo had come up as a result of a request for a license to explore this area by PETROPAR (see, Annex 11).

As to the Libya-Chad boundary, the note suggests:

> **"... elle paraît définie par les accords internationaux de manière suffisamment précise, pour ne laisser subsister, ... aucun motif sérieux de contestation."**

The closing paragraph of the note is of particular interest for it suggests that it was up to Chad and Niger, now that they were independent, to resolve their boundary problems with Libye:

> **"Quoi qu'il en soit, il semble qu'il appartienne maintenant aux Gouvernements du Tchad et du Niger, devenus indépendants, de prendre les initiatives qu'il estimeront politiquement opportunes."**

9. Two U.S. State Department documents dated 21 December 1960 and 18 January 1961.

This was prior to the issuance by the Geographer of the State Department of his studies on the Libyan boundaries to which the CC-M refers. See, Map 135 in Chad's Map Atlas. It is evident from these documents that the State Department and the Geographer were well informed as to the French point of view on these boundaries when the studies were issued as part of the International Boundary Studies series.

10. Note of 16 June 1961.

Here a proposed Libyan good-will mission to Niger, Chad and Senegal is discussed. As to the visit to Chad, the following is reported:

> "Le président Tombalbaye .... a fait savoir à Tripoli qu'il souhaitait un report en date de la mission, proposant qu'elle se situe du 27 au 30 juin. Le Gouvernement tchadien prévoit, d'ailleurs, des conversations sur les frontières et s'apprête à les soutenir avec fermeté."

Comment *This note suggests that the Libya-Chad boundary was not considered as settled by either France or Chad in June 1961.*

This note (of the Secrétaire d'Etat aux Affaires Etrangères) indicates that the Quai d'Orsay would send on to Fort Lamy all available materials -

> "... susceptibles de faciliter aux gouvernements de leurs résidences d'éventuelles discussions au sujet des frontières de leurs pays avec la Libye."

11. Note of 10 April 1968.

This document, dealing with the boundary south of Ghat, brings out the fact that the same questions concerning its course remained unresolved in April 1968. The note is accompanied by a sketch map illustrating the differences that existed.

6.10 DOCUMENTS RELATING TO MAPS SHOWING LIBYA'S BOUNDARIES

1. Study entitled "La Libye et Ses Frontières" by the Inspection Générale des Services Géographiques d'Outre-Mer, dated 23 March 1955.

This is a detailed, candid and entertaining account of the Libyan boundaries, from 1899 on, prepared in between the January and July-August 1955 negotiations. While the Study contains a number of inaccuracies and incorrect assumptions concerning the effect of certain agreements, it makes a number of interesting points:

- It starts off this way:

> "Tout ce qui concerne les frontières de la LIBYE est assez compliqué et confus. Parmi les nombreux textes, tous fragmentaires qui traitent la question il y a des accords secrets dont on connait tout au plus le titre et la date."

- The Services Géographiques had been unable to locate the text of the 1902 Accord.

- It points out the differing interpretations of the 1899 southeast line.

- It refers to the Non-Annexed Map by saying "la carte annexée à ce texte n'est pas connue".

- As to the wavy, dashed line on this map, it described it as "enregistrant sans doute une tradition plus ou moins lointaine", but clearly including Ghadamès, Ghat and Toummo within Tripolitania.

- It discusses in some detail the dispute between Italy and France regarding Toummo.

The note then discusses the French maps that were issued in 1935 and after. The French Army hastened to put out a map 1:2,500,000 reflecting the 1935 Treaty. This map was referred to by the Italians when they went to dig wells in the area of Jef-Jef, resulting in that incident in 1938, for Jef-Jef appeared on that French map on the Libyan side of the line.

In 1938, the French Army quickly revised this map in the light of the failure to exchange ratifications of the 1935 Treaty. The 1:1,000,000 map reflecting this change was not prepared carefully in the area of Toummo, and as a result Toummo was shown as within French territory. This error was not made in the revised 1:2,000,000 and 1:5,000,000 series. The revised 1:2,500,000 map, however, also contained the mistake, which was not corrected until 1949 (but on sheet no. 3 of the map the error was still repeated, showing Toummo in French territory).

Comment: These comments by another service concerning the work of the I.G.N. are of interest in the light of the glowing tribute paid the I.G.N. for impartiality and competence in the CC-M[1].

The note also points out the inconsistency in the use of the symbols of solid and dashed lines on these I.G.N. maps.

Concerning the Toummo-Tropic of Cancer segment of the boundary claimed by France, the note makes three interesting arguments, in speaking of the Accord of 12 September 1919:

> "Enfin il est muet sur le raccord entre Toummo et le point origine de la partie orientale de la frontière et sans doute n'existe-t-il aucun autre texte qui ait traité cette question; pratiquement chacun des deux voisins a adopté la ligne droite sans hésitation."

2. I.G.N. to Ministre des Affaires Etrangères dated 26 March 1955.

This dispatch discusses most of the same period as the Study discussed in Document 1 above, focussing on Toummo. It asks to be informed whether Toummo is considered to be part of Libya; if so, how to draw the line in the vicinity of Toummo.

Comment: The wavy, dashed line of the Non-Annexed Map shows Toummo to lie on the Tripolitanian side of the line. Clearly, the French did not regard that line as indicating a definitive boundary, for they sought to claim Toummo as lying on the French side of the line. Here the I.G.N. is asking for political guidance as to how to draw the line.

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[1] See, CC-M, para. 10.39.

3. Note of the Inspection Générale des Services Géographiques d'Outre-Mer, dated 10 May 1955.

This is a critique of the 1942 (1948) I.G.N. maps showing the Libyan boundary with Algeria. It reveals many questionable decisions taken as to the course of the line in both sectors of the Algerian boundary.

4. Series of documents concerning ICAO maps and documents, on which the 1935 line appeared, May-December 1955.

On 24 May 1955, the Ministre des Travaux Publics (Sécretariat Général à l'Aviation Civile et Commerciale) brought this matter to the attention of the Ministre des Affaires Etrangères asking whether ICAO should be asked to modify this line. In a note of 28 June 1955 prepared by the Direction Générale des Affaires Politiques, the question is examined. It points out that numerous "Anglo-Saxon", German and Italian maps show the 1935 line. The conclusion reached is that a request to modify the boundary shown should be made here and whenever elsewhere this issue is posed by maps. It indicates that the line should follow the 1899-1919 line and, on the west, that shown in the 12 September 1919 Accord - specifying, in addition, a straight line from Toummo to the Tropic of Cancer.

The French proceeded to take the matter up with ICAO, and on 9 November 1955 the Secretary General of ICAO replied. His staff had done their homework, and referred to the U.N. Secretariat Report of 1950 and Resolution 392(V). The Secretary General observed that -

> "Il pourrait donc sembler que la frontière qui nous concerne ne fût pas considérée comme fixée par l'Assemblée Générale de 1950."

He concluded his letter in this way:

> "Il me semble difficile, d'autre part, de modifier la frontière entre la Libye et l'Afrique Equatoriale Française sur les cartes de base utilisées par l'OACI, sans que d'abord aient été éclaircis les points soulevés dans cette lettre."

Comment: *It is noted that this letter was written four months after signature of the 1955 Treaty.*

In a note of 10 December 1955, the Direction Générale des Affaires Politiques sets out the French position that the 1955 Treaty resolved the question of Libya's boundary east of Toummo. This was so because the Treaty in Article 3 and Annex I -

> "... prévoit ... que les frontières franco-libyennes résultent des actes internationaux énumérés dans la liste limitative... ."

The note then lists the agreements set out in Annex I, including "un croquis extrait de la carte annexée à cette dernière déclaration" (the 1899 Declaration), and it observes that "cette carte a été légèrement modifiée par la Convention franco-britannique du 8 Septembre 1919". The note says it is the 1919 line that should be adopted -

> "... le Traité franco-libyen ayant formellement reconnu la valeur de cette convention qui aurait pu être contestée par la Libye, l'Italie n'y ayant pas été partie."

Comment: This is the first time that the French position was not based on the 1902 Accord but on the supposed formal recognition by Libya in the 1955 Treaty of the validity of the 1919 Convention. It concedes that, as of the critical date (1951), the 1919 line could have been contested by Libya as not opposable to Libya.

The end of this saga is not revealed by documents found in the Quai d'Orsay archives.

5. Documents Relevant to Map No. 1 annexed to Libyan Petroleum Regulation No. 1 of 1955.

On 5 August 1957, M. Dumarçay, French Ambassador to Libya, wrote to M. Pineau, the French Foreign Minister concerning an inquiry regarding the Libyan boundaries as shown on Libya's Map No. 1 (issued four days after the 1955 Treaty was signed).

M. Dumarçay informed the Minister that in a note verbale of 25 August 1955 he had formally protested the boundary shown on this map as not in conformity with the international texts in force, as listed in Annex I of the 1955 Treaty. The note verbale, attached to the dispatch, says the following about the line shown on Libya's Map No. 1:

> **"... le tracé de la frontière ... n'est pas conforme aux textes internationaux en vigueur, tels qu'ils ont été définis (in Annex I) ... ."**

It is important to note that this note verbale referred to the Libyan map's alleged nonconformity with the international texts in force, not with the 1955 Treaty, and the reference to Annex I concerned the texts there defined, not a boundary.

6. Governor of Chad to Governor General of the A.E.F., 30 September 1957, and other documents concerning the Map TARIDE.

This dispatch observes that not everyone was in agreement as to the boundary in the sector previously affected by the 1935 Treaty. He refers to a recent "Mission Booth". Now he has come across "la carte TARIDE" 1:8,000,000 which shows the 1935 line.

The Governor asks that this and similar examples be submitted to the Department, for he fears difficulties may be encountered between oil prospectors licensed by Chad and by Libya if the matter of maps is not straightened out.

The Quai d'Orsay then wrote to the Société des Cartes TARIDE in Paris - the map was apparently regarded to be a French map of a semi-official character - on 21 October 1957. The map publisher was requested to modify the line in accordance with details it could obtain from the I.G.N. The letter contains this paragraph:

> **"Il vous apparaîtra sans aucun doute qu'elle ne saurait être plus longtemps reproduite, car non seulement la carte TARIDE, est un document très répandu dans le grand public, français et étranger, mais encore la persistance d'un faux tracé sur les éditions a venir pourrait être interprétée par le Gouvernement libyen comme par des pays tiers, comme une reconnaissance tacite de notre part d'un état de fait éminemment favorable à la Libye."**

The dispatch of 24 October 1957 from the Ministre de la France d'Outre-Mer to the Ministre des Affaires Etrangères refers to the same incident and to the comment of the Governor of Chad that not everyone recognizes the boundary line maintained by France. The only solution, he suggests, is to proceed with demarcation, specifying the Algerian boundary.

7. Series of documents, May-June 1960, concerning the problem posed for oil companies by the overlapping of the Libya, Chad and Niger boundaries.

The first document (18 May 1960) concerns the French company PETROPAR, a subsidiary of the Bureau de Recherches de Pétrole (B.R.P.), seeking an exclusive license from Niger. The boundary shown on French and on Libyan maps was not the same. PETROPAR intended to go ahead with its exploration in the overlap area but sought French military protection in the event of a reaction from Libya.

A note of 30 May 1960 from B.R.P. counsel points out that the course of the part of the boundary between point 1010 (designated in Annex I) and Toummo had not been fixed. The note describes the alternative possible positions in view of difficulties in applying the Accord of 12 September 1919 to the actual terrain (which had been specified following the "monts de Toummo" and the caravan routes, which did not exist). It is mentioned that many U.S. companies during 1959-1960 had conducted research expeditions in the Toummo region and that a permit request of Pan American Petroleum substantially overlapped the permit request of PETROPAR.

This overlap of licenses, (involving some 15,000 km^2) is dealt with more fully in an undated, unsigned note on the Niger-Libya boundary apparently prepared for the Secretary General of the Community, who then wrote to the French Minister of Foreign Affairs. Gulf Oil is mentioned as one of the prospectors for Libya, which brings out the fact that Annex I only designated three points on the boundary between Ghat and Toummo and that M. Dejean's side letter to Prime Minister Ben Halim of 8 August 1955 suggesting how the line should be drawn was not part of the agreement and that this sector had never been demarcated. Three possible lines are discussed, and the note recommends that the matter be quickly resolved:

> "La rivalité économique peut degénérer rapidement en incident diplomatique qu'il serait souhaitable d'éviter."

The French Foreign Minister M. Couve de Murville wrote back to the Secretary General of the Community mentioning that with Niger's accession to independence soon to occur "il lui appartiendra de discuter directement avec le Gouvernement de Tripoli ses problèmes de frontière". This letter goes on to remark that -

> "Comme vous le savez une grande partie des frontières franco-libyennes demeure imprécise ... Si nous entendions défendre nous-mêmes le tracé le plus favorable entre la côte 1010 ... et Toummo ... où les pétroliers ont d'ores et déjà reconnu des indices encourageants, nous pourrions être contraints de consentir des abandons dans d'autres secteurs sahariens qui peuvent aussi présenter de l'intérêt."

Comment: Thus, five years after the 1955 Treaty had been signed, the French Foreign Minister said that a large part of the Franco-Libyan boundary remained "imprécise" with future negotiations foreseen where there would be give and take.

M. Couve de Murville added:

> "J'ajoute qu'il va de soi que dans le cas où la République du Niger serait en mesure de conduire elle-même des négotiations avec la Libye, nous lui fournirons tous les éléments nécessaires pour défendre ses thèses dans les meilleures conditions."

In a dispatch from M. Sebilleau (French Ambassador in Tripoli) to the French Foreign Minister of 13 June 1960, referring to this problem of overlapping oil concessions, a tour d'horizon of the Libyan boundary situation was made. He noted that, from the boundary between Ghat, Toummo and Sudan, the Libyan oil maps "se permettaient des prétentions très fantaisistes en regard aux traités existants". The dispatch also brings out the fact that Annex I modified the Accord of 12 September 1919 as to the Ghat-Toummo boundary sector when it designated the three points through which the boundary should pass.

In this important dispatch, Ambassador Sebilleau mentions that on 13 May 1960 he had been informed that the company TOTAL LIBYE (C.F.P.) had come south from Libya and worked in what he called Chadian territory between 9 January and 18 March 1960. At Chad's request, M. Sebilleau had taken steps to -

> "... rappeler la direction de cette Compagnie au respect de la frontière telle qu'elle est définie par les traités existants."

He had at the same time learned that the oil prospectors of B.R.P. had conducted "une reconnaissance profonde en territoire libyen". M. Sebilleau goes on to mention his surprise to find that there appeared at page 52 of a report of the World Bank entitled "The Economic Development of Libya" a map of oil concessions reproducing the line claimed by Libya. He concludes from this:

> "Il est donc probable que, dans un avenir plus ou moins proche, la définition de la frontière franco-libyenne, entre Ghat et la frontière soudanaise, deviendra une nécessité. Je persiste cependant à penser que cette définition ne saurait être recherchée en dehors d'un règlement d'ensemble du problème frontalier, sans une initiative libyenne et avec un Gouvernement dont on se demande s'il existera encore à la fin de l'été."

The dispatch concludes by recommending two things be done: (i) advise the World Bank that it ought not to publish in an official document maps "non conformes aux traités existants"; and (ii) to address a note verbale to the Libyan Government that it should not grant a permit to Panamerican that extends beyond the boundary line between Ghat and Toummo "telle qu'elle résulte de l'Annexe I du traité du 10 août 1955".

8. Documents concerning whether to publish the revised map 1:200,000 prepared by I.G.N. showing the rectified boundary between Ghadamès and Ghat resulting from the 1956 Agreement (13 June, 26 July 1960 and 18 July 1961).

These three documents reveal that the French Government had been reticent about publishing new maps showing this boundary, although it had gone ahead with the "Mission LEPIN" of the I.G.N. in 1957 to demarcate the boundary unilaterally. However, with the publication by the U.N. of the 1956 Agreement and annexed maps, the recommendation was to go ahead and publish.

Comment: It will be recalled that the 1956 Agreement was never presented to the Libyan Parliament or ratified by Libya. Nevertheless, the French Government proceeded to have it registered under Article 102 of the U.N. Charter. After Prime Minister Ben Halim was succeeded as Prime Minister, the Libyan Government refused to go ahead with demarcation of the Algerian boundary as rectified by the 1956 Agreement.

Ambassador Sebilleau favored going ahead with publication of the map due to the confusion reigning as a result of Libyan Map No. 1 of 1955. However, an additional problem existed for the I.G.N.: the 1956 Agreement was sufficiently precise as to the boundary between Ghadamès and Ghat, but the 1955 Treaty (and Annex I) were imprecise as to the sector south of Ghat up to point 1010, where the Nigerian boundary began. The I.G.N. 1942 (1948) map for this region was approved as the basis for the line to be shown on the new map, subject to it being corrected so as to *have the boundary pass through the Col d'Anaï, one of the three points designated in Annex I.*

The note of 18 July 1961 consists of comments by the Section Géographique, Service des Archives Diplomatiques et de la Documentation of the map to be copied by the I.G.N. to show the rectified Algerian boundary. It strongly protests the fact that the map shows two pistes in a region where only one is identifiable. The note asserts that:

> "... demander au document cartographique de ne pas représenter fidèlement les accidents naturels ou artificiels du sol, serait commettre une inconcevable hérésie."

Comment: *This estimate of the work of the I.G.N. by a sister French geographical service should be read in conjunction with the CC-M's strong statements about the impartiality of the I.G.N..*

9. Documents relating to the World Bank map.

In Document 8 above, in Ambassador Sebilleau's dispatch of 13 June 1960, it is mentioned that he reported that in the Bank's study, entitled "The Economic Development of Libya", a map appeared showing the 1935 line. The French Foreign Ministry followed up M. Sebilleau's recommendation, asking the French Ambassador in Washington to communicate France's objection to this map to the Bank because the "limites" shown on the map -

> "... ne correspondent pas au tracé qui ressort des accords en vigueur ...."

The dispatch of 25 January 1961 to Washington made the additional point that France had formally objected to Libya's Map No. 1 attached to its 1955 Petroleum Law and Regulation.

The letter paraphases Article 3 and Annex I of the 1955 Treaty, adding that the 1956 Agreement had defined the Algerian boundary as far south as Ghat "de manière extrêmement nette". However, it does not mention that Libya had not ratified the 1956 Agreement.

10. New Libyan petroleum map. This dispatch from the French Ambassador in Tripoli to the Ministry of Foreign Affairs of 28 April 1961 concerns the preparation of a geological map of Libya with the help of two American geologists. The U.S. Ambassador had told M. Sebilleau that the Department of State was worried about two American experts getting involved in "cette affaire de frontières".

Concern is expressed in this dispatch that the emergence of such a new Libyan map would create conflicts among the oil companies; and it was suggested that France, Libya and Chad might warn Libya of the consequences of such an action. If this had no effect, it at least constituted a protest.

__Comment__ This again shows that long after the 1955 Treaty was signed confusion reigned as to the location of Libya's western and southern boundaries.

No. 7

SUPPLEMENTARY ANNEX, NO. 7

COMMENTARY ON DOCUMENTS FROM THE FRENCH ARCHIVES, VINCENNES

(with illustrative Map LR 43)

7.1 Extracts from the History of the French Military Post at Tekro.

7.2 Extracts from the Diary Concerning French Military Occupation of Wour.

7.3 1933 French Military Study of Establishment of Plan of Defense of Tibesti.

7.4 Special Study (continuation of Annex 3 Study) Concerning "la réduction d'un centre de rebellion à Modra" (1933).

7.5 Series of Reports 1911-1922 of "tournées" undertaken from Bilma.

7.6 Dispatch of 5 April 1955 from the Governor General of Algeria to the Minister of Interior.

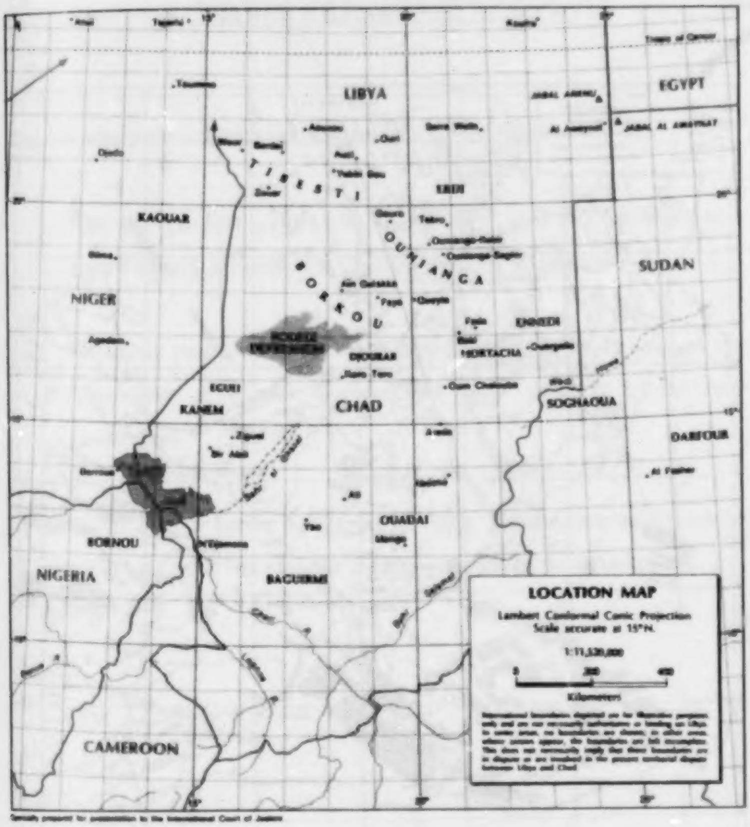
7.7 Extract from the 1934 Report of Captain Vicaire on the Defence of Tibesti.

7.8 Report of 20 December 1954 Concerning the Régime Frontalier in the Niger-Libya Frontier Sector.

7.9 Note d'Information of 12 April 1955 Concerning "Visées Etrangères" Over the Fezzan-French Frontier Region, Including a Discussion of the "Aouzou Incident".

7.10 Boundary Study by Captain Lehuraux dated 26 May 1931: Algeria - A.O.F. - Libya.

LR 43


Tropic of Cancer
LIBYA
EGYPT
JABAL ARKENU
JABAL AL AWAYNAT
Al Awaynat
Sarra Wells
TIBESTI
ERDI
KAOUAR
Bilma
SUDAN
NIGER
Agadem
OUNIANGA
Ounianga Kebir
Ounianga Serir
BORKOU
Ain Galakka
Faya
Gouro
Fada
ENNEDI
Bodele Depression
DJOURAB
MORTACHA
EGUEI
KANEM
CHAD
SOGHAOUA
DARFOUR
Al Fasher
Zigueï
Bir Alali
Bornou
BORNOU
N'Djamena
OUADAI
Mongo
Ati
Abeche
BAGUIRMI
NIGERIA
CAMEROON
LOCATION MAP
Lambert Conformal Conic Projection
Scale accurate at 15°N.
1:11,520,000
0
200
400
Kilometers

Specially prepared for presentation to the International Court of Justice

Abo region of Tibesti

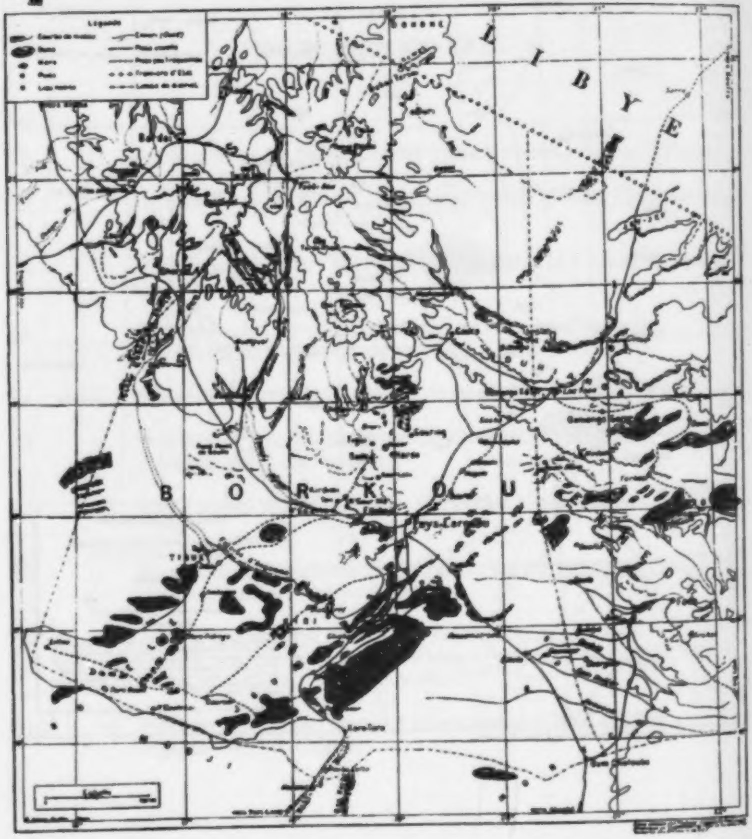

LIBYE
BORKOU
Légende

FIG. 1. — Carte du Borkou et de l'Ounianga.

Source: Capot-Rey, 1961

7.1 EXTRACTS FROM THE HISTORY OF THE FRENCH MILITARY POST AT TEKRO

The following points of interest are revealed in this document:

- Post of Tekro first occupied on 21 December 1933 and evacuated on 8 April 1935 with the assassination of the French Chief of Post,

- An Italian patrol visited Tekro in December 1932, Tekro lying on the Libyan side of a strict southeast line under Article 3 of the 1899 Declaration;

- It was fear of Italian occupation of Tekro that induced the French to occupy it for the first time one year after the visit of the Italian patrol.

7.2 EXTRACTS FROM THE DIARY CONCERNING FRENCH MILITARY OCCUPATION OF WOUR

These relevant points emerge:

- Post first established on 5 August 1930;
- It was closed in June 1934.

73 1933 FRENCH MILITARY STUDY OF ESTABLISHMENT OF PLAN OF DEFENSE OF TIBESTI

This study brings out clearly that throughout Tibesti there remained centers of "dissidence" in 1933. Part of the plan concerned wiping out these pockets of resistance among the local peoples to the French military advance into the area .

7.4 SPECIAL STUDY (CONTINUATION OF ANNEX 3 STUDY) CONCERNING "LA REDUCTION D'UN CENTRE DE REBELLION A MODRA" (1933).

Modra lies south of Yebbi Bou to the west of the Miski Valley (Map LR 43 at the beginning of this Exhibit). The difficulties experienced with the Toubou in this region in the past are recounted in the study, including the refusal of the Derde[1] to recognise French authority. A 1914 battle against the French led by the Derde is recounted.

The military objective in 1933 was that Modra be "entièrement ruiné". This establishes beyond any doubt that the use of force by French military forces continued in this area as late as 1933 and that French occupation of the Tibesti, begun in 1929-1930, was anything but peaceful in 1933.

The study continues a short description of "l'adversaire", mentioning the Modroas, the Toubou and the Miskias (inhabitants of the Miski Valley, which runs to the west of Emi Koussi (See, Map LR 43). It discusses the history of combat between the French and the indigenous peoples in the region going back to 1914.

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[1] The leader of the Toubou.

7.5 SERIES OF REPORTS 1911-1922 OF "TOURNEES" UNDERTAKEN FROM BILMA

The last report (p.22) is of the 1922 "contre rezzous" undertaken by Captain Rottier in the Abo region of Tibesti (see, Map LR 43). It shows that the French activities conducted by the A.O.F. (in Bilma) in Tibesti were limited to putting down rezzous and punishing the dissident peoples. The range of French activity, as shown on a sketch map attached to the report (p. 25), extended no further east than Bardaï.

7.6 DISPATCH OF 5 APRIL 1955 FROM THE GOVERNOR GENERAL OF ALGERIA TO THE MINISTER OF INTERIOR

This document reports an unfriendly meeting between French and Libyan authorities concerning Libyan patrols extending into what France believed was Algerian territory in the Tarat-Ghat region inhabited by the Ajjer Tuareg (see sketch map attached to document). Its significance is in demonstrating that at the same time as the so-called "Aouzou Incident", which Chad's pleadings have attempted to turn into such a significant event, there were other incidents along other parts of the Libyan frontier with France (Algeria) and French colonial territories, symptomatic of the confused state of the boundary. The Ajjer Tuareg tribes were being manipulated by both sides in the dispute over the Ghat area.

This incident, involving a direct confrontation between French military and Libyan civilian authorities, had an importance certainly as great as the relatively minor incident at Moya-Aouzou. Although it did not concern the borderlands here in dispute, the incident illustrates that the incidents on the west and on the south arose from the unsettled status of the frontier regions.

7.7 EXTRACT FROM THE 1934 REPORT OF CAPTAIN VICAIRE ON THE DEFENSE OF TIBESTI

This is a military assessment of the strength and effectiveness of the various French military posts established in Tibesti, in general calling for some increase in strength. It brings out the entirely military, defensive character of the French occupation of Tibesti, which had only begun in 1929-1930.

7.8 REPORT OF 20 DECEMBER 1954 CONCERNING THE REGIME FRONTALIER IN THE NIGER-LIBYA FRONTIER SECTOR

This report reveals the existence of a cross-frontier modus vivendi in 1954 even though the location of the boundary was unsettled, at least in the mind of the French. It brings out the fact that the boundary question was quite separate from the régime frontalier, the latter not being dependent at all on the question of the boundary being settled.

7.9 NOTE D'INFORMATION OF 12 APRIL 1955 CONCERNING "VISEES ETRANGERES" OVER THE FEZZAN-FRENCH FRONTIER REGION, INCLUDING A DISCUSSION OF THE "AOUZOU INCIDENT"

This is a French Ministry of Foreign Affairs summary prepared following the so-called "Aouzou Incident". It contains none of the conclusions now advanced by Chad as to the meaning of this episode - for example, that it allegedly reflected recognition by Libya of French sovereignty over the region.

Quite to the contrary, the note interprets the incident as a deliberate test of France's reaction devised with the collusion of the U.S. and U.K. Governments and the oil interests of those countries. It mentions the subsequently planned joint British-Libyan manoeuvres as part of this scheme.

The make up of the Libyan party that visited Moya-Aouzou is correctly described in the note - bringing out its civilian rather than military character. It indicates concern that in the party were three Toubou from Koufra; and it mentions rumours of a Toubou movement to claim Libyan nationality.

The note points to repercussions of this collusion in other areas of the boundary - at Toummo, for example. It concludes that it was urgently required to "fixer notre frontière par un texte formel et, sur place, par une commission mixte ou tri-partite". This brings out two points:

- The French were quite aware that, in April 1955, Libya's southern boundary had yet to be delimited;
- No suggestion at all is made in this comprehensive evaluation of the "Aouzou Incident" of any alleged Libyan recognition of French sovereignty.

7.10 BOUNDARY STUDY BY CAPTAIN LEHURAUX DATED 26 MAY 1931: ALGERIA - A.O.F. - LIBYA

The study mentions both the plans to delimit the boundaries between French and Ottoman territories in 1911 - and the subsequent discussions in 1914 between Italy and France leading to the scheduling of the first meeting of a joint delimitation commission to be held in Zurich. This meeting was cancelled with the outbreak of World War II.

The Study refers to the Tripolitanian frontier south of Ghadamès, as it was conceived in 1919, as being "assez vague". It also discloses that discussions had taken place in Paris in 1914 concerning the boundary between Libya and Algeria, and it criticizes the boundary that was delimited by Italy and France in the 1919 Accord, considering it to have been more favourable to Italy than France had been prepared to be in 1914.

There is also a summary of the French relations with the Ajjer Tuareg going back to 1857. One of the sheikhs, named Othman, was particularly friendly to France, providing an escort for the French explorer Duveyrier in 1860-1861. Sheikh Othman visited France in 1862 and was presented to the Emperor and various governmental officials. This led to the mission of Mircher de Polignac, who met with the Chiefs of the Ajjer tribe, allegedly without Ottoman interference or objection from Tripoli, and on 26 November 1962 signed a convention at Ghadamès with the Tuareg, which was officially published in the Moniteur Officiel of 10 March 1863 - again raising no Ottoman objection. Although essentially economic in coverage, the convention also dealt with such matters as digging wells, improving caravan routes, and levying taxes on caravans.

In 1892 the same tribe sent a delegate to French Algeria. They requested French intervention with the Ottomans in connection with obtaining certain reparations.

What the study seems to show is that the French in the area of the Tuareg tribes were able to secure the acceptance by the peoples of the presence of French forces. The Study refers to Ghat as the capital of the Ajjer Tuareg country. It deplores the prospect of any further encroachments on this territory by Italy, contending that the tribes wished to live in peace under French protection.

It is evident that the French did not regard the regions inhabited by the Tuareg confederation of tribes to be terra nullius. It is not apparent how it can be argued, particularly after Senoussi leadership was implanted in the borderlands, that the Awlad Sulaiman or Toubou tribes were sufficiently different from the Tuareg as to mean that the regions they inhabited were terra nullius, as Chad maintains in its Counter-Memorial.

No. 8

SUPPLEMENTARY ANNEX, NO. 8

COMMENTARY ON OTTOMAN DOCUMENTS FROM PRIME MINISTER'S ARCHIVES, ISTANBUL

8.1 Council of State Document No. 331, 25 May 1883.

8.2 Letter signed by the Grand Vizier, dated 11 September 1884, to which a report of 15 August 1884 from the vilayet of Benghazi is attached, and letter from the Governor of Tripoli, dated 15 September 1884.

8.3.1-8.3.2 Orders issued by the Imperial Private Secretary dated 17 April 1886 and 15 October 1888.

8.4 Memorandum dated 9 April 1889 prepared by the Chief of Staff Commission appraising a recent report from the vilayet of Tripoli.

8.5.1-8.5.2 Two Reports of the Imperial General Staff dated 4 July 1891 and 11 February 1892.

8.6.1-8.6.2 Reports from Benghazi and Tripoli of 6 and 7 July 1899 assessing French designs in the light of the recently signed 1899 Declaration between Great Britain and France.

8.1 COUNCIL OF STATE DOCUMENT NO. 331, DATED 25 MAY 1883

This document brings out the importance to the Porte of the practice of giving gifts to the religious sheikhs and tribal chiefs in the Tripolitania-Cyrenaica region, a practice dating back to 1854. The gifts included: ceremonial robes, horses, precious cloths, shoes and fezzes.

Two quotations from this documents illustrate the importance of the ceremonial robes, in particular:

> "If the Sheikhs of the loyal tribes are not given their customary robes they will feel themselves insulted and demoted. That this will cause serious problems in the exercise of influence and power in tne area has been made known by the communications of the provisional government of Tripoli."

* * *

> "... it is not possible to collect taxes without the distribution of the ceremonial robes."

8.2

LETTER SIGNED BY THE GRAND VIZIER, DATED 11 APRIL 1884, TO WHICH A REPORT OF 15 AUGUST 1884 FROM THE VILAYET OF BENGHAZI IS ATTACHED, AND LETTER FROM THE GOVERNOR OF TRIPOLI, DATED 15 SEPTEMBER 1884.

These documents discuss the Ottoman-Senoussi relationship and contain an assessment of the Senoussi Order's influence. The "very beneficial effect on the education and moral upbringing of the local population" is mentioned as well as the fact that the sheikhs of the Order "do sometimes intercede as arbiters in disputes, thus rendering invaluable service to the State".

The letters refer to a large number of cerermonial Korans being sent to the Order for distribution among the zawiyas.

8.3.1-8.3.2 ORDERS ISSUED BY THE IMPERIAL PRIVATE SECRETARY DATED 17 APRIL 1886 AND 15 OCTOBER 1888

These Orders instruct that the salary paid to the Sheikh of the Benghazi zawiya be increased to 1,000 qurus, revealing that the Ottoman Empire at the time paid a substantial salary directly to certain Senoussi sheikhs.

8.4 MEMORANDUM DATED 9 APRIL 1889 PREPARED BY THE CHIEFS OF STAFF COMMISSION APPRAISING A RECENT REPORT FROM THE VILAYET OF TRIPOLI

The report concerned French designs on the provincial prefecture of Ghadamès as well as further south in the region of Kaouar. The Commission's memorandum takes up the problem of defending the area particularly in order that the Sudan trade of Tripoli not fall into foreign hands.

Due to the long distances and other difficulties in stationing substantial numbers of Ottoman troops, the recommendation is to "use the methods that are currently employed by the European colonial powers" - that is relying on the local peoples. The Sheikh of Kaouar would be appointed Mutassarrif by the Porte, together with an appropriate salary and the "requisite ceremonial robes". Arms and uniforms would be sent and the Ottoman flag would be flown.

European objection would be rebuffed by the fact that the Porte was exercising his rights "according to the principle of hinterland".

8.5.1-8.5.2 TWO REPORTS OF THE IMPERIAL GENERAL STAFF DATED 4 JULY 1891 AND 11 FEBRUARY 1892.

The reports address the growing threat of the Colonial Powers encroaching on Ottoman Libya. The first report recommends conscription of local peoples to assist in their own defense and discusses the organization of the defending forces. It stresses military service in the Sultan's armies as a religious duty incumbent on all Muslims. The report adds the following:

> "It is of the utmost importance that Shaikh Senusi, whose word is extremely influential among the nomads and tribes, lend his support to this enterprise; in furtherance of this aim it is necessary that the Sublime Porte and the Palace be advised to intercede with him in the required manner."

This statement brings out the unique status of the Senoussi Order and the importance of its support to the Ottoman Empire in providing for the defense of Libya and its hinterland.

The second report emphasizes shifting back the Mediterranean terminus of the Bornou caravan route (from Algiers and Tunis) to Tripoli and sending gifts to Bornou by an appropriate emissary. He would be instructed to talk with the Awlad Sulaiman tribe located northeast of Chad to help secure the trade routes and prevent raids and inter-tribal fighting.

The report mentions that Ghat can only be secured by attaching the Tuareq to the Imperial Government. It recommended that weapons be sent to Bornou, Wadaï and Darfour. The ninth and last recommendation was this:

> "The Governor of Binghazi ... should immediately visit Sheikh Senusi, bearing with him the regulations pertaining to the establishment of the Hamidiye Regiments and the requisite gifts. He should make known to him our wishes regarding the region and should attempt to procure from him acts in keeping with his

favourable language regarding the Sublime Porte. He should also be told about our views regarding the events in central Africa. It should not be forgotten that no love is lost between Shaikh Senusi and the Mehdi of Sudan .... [The Governor of Benghazi] is to examine whether we can turn this to account."

8.6.1-8.6.2 REPORTS FROM BENGHAZI AND TRIPOLI OF 6 AND 7 JULY 1899 ASSESSING FRENCH DESIGNS IN THE LIGHT OF THE RECENTLY SIGNED 1899 DECLARATION BETWEEN GREAT BRITAIN AND FRANCE

In order to protect Libya's hinterland, a number of military and governmental measures are recommended. The immediate concern was with the French attempts to subvert the tribes in the areas of Ghadamès and Ghat in order to turn the Sudan trade routes away from Tripoli to Tunis and Algiers.

The strong religious ties of the local tribes to the Caliphate are emphasized in these reports.

No. 9

SUPPLEMENTARY ANNEX NO. 9

COMMENTARY ON DOCUMENTS FROM QUAI D'ORSAY FILE: N.S. TURQUIE 422, DOSSIER I

9.1 Résumé historique 1890-1909, note of Lt. de Brancion, Détaché au Service Géographique du Département (l'arrière pays de la Tripolitaine), 1909.

9.2 Note sur l'activité des Turcs dans le Tibesti, 25 April 1910.

9.3 Ministre des Colonies à M. le Ministre des Affaires Etrangères (Caimakan du Tibesti), 27 June 1910.

9.4 Chargé d'Affaires de France à Constantinople à M. le Ministre des Affaires Etrangères (la nomination d'un Kaïmacam au Tibesti), 22 July 1910.

9.5 Général, Directeur des Services Militaires to the Sous-Chef du Bureau de l'Afrique et du Service Géographique et des Missions (une opération dans le Tibesti-Borkou), 15 November 1910.

9.6 Note from the Présidence de la République (Tibesti et Borkou), 14 February 1911.

9.7 M. G. Lelorrain, Vice Consul de France à Benghazi to M. Cruppi, Ministre des Affaires Etrangères, together with a note: "Situation Actuelle des Senoussis", 6 March 1911.

9.8 Note for the Ministre des Affaires Etrangères (Délimitation de la Tripolitaine, Affaires du Tibesti), 13 March 1911.

9.9 Consul Général de France à Tripoli de Barbarie to M. Cruppi, Ministre des Affaires Etrangères, 6 April 1911.

9.10 L'Ambassadeur de France à Constantinople to M. le Ministre des Affaires Etrangères (Renseignements sur le Tibesti) 9 May 1911.

9.1 RESUME HISTORIQUE 1890-1909, NOTE OF LT. DE BRANCION, DETACHE AU SERVICE GEOGRAPHIQUE DU DEPARTEMENT (L'ARRIERE PAYS DE LA TRIPOLITAINE), 1909

This note gives a résumé of the various Ottoman protests against Anglo-French encroachments into the Tripolitanian hinterland - the Ottoman notes were sent in 1890, 1899 and 1902.

It recounts the Ottoman activities in the region of the Tuareg tribes, especially in the region of Bilma and Djanet. The Ottomans started to occupy Bilma in 1901, then withdrew; the French occupied Bilma in 1906.

As to Djanet, the note describes the 1906 status quo agreement between the Ottomans and French, violated by the Ottomans, who proceeded to occupy Djanet.

The note brings out a number of points:

- The vigour with which the Ottoman forces acted in the Djanet-Bilma region;

- The frequent French protests - met by Ottoman denials that these activities were taking place (although they were);

  Comment: The repeated French protests contrast with the relative silence of the French Government to Ottoman occupation of the borderlands, starting in 1908. However, in both cases, a modus vivendi was reached in anticipation of settlement at the diplomatic level.

- The agreement on a "zone neutre" around Djanet, violated by the Ottomans in 1908.

- Ottoman activity among the Tuareg tribes.

9.2 NOTE SUR L'ACTIVITE DES TURCS DANS LE TIBESTI, 25 APRIL 1910

This note, based on information provided from Bilma by Capt. Colonna de Leca, describes the Ottoman occupation of Tibesti starting in 1908 and the official appointment of the Derde of the Toubou as the Kaimakam of Tibesti, a civilian post. It reports that the Ottoman flag was flying over Bardaï in 1908.

The report concludes that it appeared that the Ottomans had every intention of taking over the Tripolitanian hinterland and of barring the French therefrom.

9.3 M. LE MINISTRE DES COLONIES A M. LE MINISTRE DES AFFAIRES ETRANGERES (CAIMAKAN DU TIBESTI), 27 JUNE 1910

In this 1910 dispatch the Ministry of Colonies urges the Quai d'Orsay to protest to the Porte the appointment of Dr. Osman Effendi from Fezzan as Kaimakam of Tibesti, saying that it was a violation of the modus vivendi, or in the words of the dispatch:

> "... cette violation du modus vivendi que vous aviez suggéré à l'Ambassade de la Porte et qui était basé sur l'observance stricte du statu quo dans toute la contrée litigieuse, jusqu'à la délimitation à intervenir."

The dispatch suggests that appointing such a civilian official in Tibesti was tantamount to an "acte de possession" by the Ottomans.

It would be hard to imagine a clearer statement at the top level of the French Government in 1910 that Libya's southern boundary had not been delimited.

9.4 CHARGE D'AFFAIRES DE FRANCE A CONSTANTINOPLE A M. LE MINISTRE DES AFFAIRES ETRANGERES (LA NOMINATION D'UN KAIMACAM AU TIBESTI), 22 JULY 1910

This 1910 dispatch sent to Paris from the French Ambassador to the Porte concerns the same subject as Document 3 - the appointment of a Kaimakam of Tibesti.

It reveals that the French Ambassador (Bompard) had raised this subject with Rifaat Pacha of the Ottoman Foreign Ministry, who responded that such a civilian post had existed in Tibesti for 25 years and that the official received a salary of 5 livres a month. The French Ambassador challenged this statement and asked for proof.

As to the status quo, Rifaat Pacha had pointed out that, even if Tibesti was in the French zone of influence by virtue of the 1899 Anglo-French Declaration, the Porte had protested the Declaration and reserved the Ottoman rights.

9.5 GENERAL, DIRECTEUR DES SERVICES MILITAIRES TO THE SOUS-CHEF DU BUREAU DE L'AFRIQUE ET DU SERVICE GEOGRAPHIQUE ET DES MISSIONS (UNE OPERATION DANS LE TIBESTI-BORKOU), 15 NOVEMBER 1910

General Lasserre reviews, in this 1910 note, the difficulties of establishing posts in Bardaï and Aïn Galakka, if the French decide to do so, and he sets out the troop and logistics requirements.

He warns that the incursions such as the French made in April 1907 (Capt. Bordeaux) and September 1908 (Capt. Cellier) were pointless, saying as to these two forays "leur résultat pratique a été nul".

This note refutes Chad's suggestion that in 1907 and 1908 (rather than in 1913) France started its occupation of the borderlands.

9.6 NOTE FROM THE PRESIDENCE DE LA REPUBLIQUE (TIBESTI ET BORKOU), 14 FEBRUARY 1911

This 1911 hand-written note of the President of France indicates that five decisions had been reached by the Council of Ministers based on a proposal submitted by the Ministry of Colonies:

> First, that the Porte urgently be requested to move up the date for the start of the boundary delimitation; the date suggested by the Porte was too far off;
>
> Second, that France energetically protest the Ottoman march into areas falling within the French zone of influence under "actes internationaux";
>
> Third, that France claim sovereignty over this region;
>
> Fourth, that France stipulate formally that the acts directed against the legitimate claims of France will not count in the Porte's favour in the negotiations;
>
> Fifth, that good relations between the two States will lead to a satisfactory solution.

This note points up the importance to the French Government in 1911 of reaching a delimitation agreement with the Ottomans.

9.7 M. G. LELORRAIN, VICE CONSUL DE FRANCE A BENGHAZI TO M. CRUPPI, MINISTRE DES AFFAIRES ETRANGERES,TOGETHER WITH A NOTE: "SITUATION ACTUELLE DES SENOUSSIS", 6 MARCH 1911

This 1911 French assessment of the Senoussi by the French Consul at Benghazi brings out several points of interest:

- The political strength of the Senoussi in the Administrative Council of Cyrenaïca.

- The aggressiveness of the Senoussi against the French invaders in the south:

> "Pour l'Afrique centrale, Koufra est la capitale réligieuse et le centre politique ...."

- The tax exempt status of the zawiyas under Ottoman administrative regulations.

- The note lists the zawiyas, and the sheikhs of each, as of 1910 (including Arada at 15°N latitude and Massalit).

9.8 NOTE FOR THE MINISTRE DES AFFAIRES ETRANGERES (DELIMITATION DE LA TRIPOLITAINE, AFFAIRES DU TIBESTI), 13 MARCH 1911

This 1911 note is an excellent summary of Franco-Ottoman differences over the Tripolitanian hinterland, starting with the Ottoman occupation of Ghat in 1876, without French protest. It discusses the 1906 status quo agreement over Djanet and the establishment of a zone neutre; and it mentions the appointment of Dr. Osman Effendi (from Fezzan) as Kaimakam of Tibesti in 1910, and the resulting discussions in Constantinople, including the Ottoman claim that Tibesti had been a sandjak of Fezzan for 25 years.

The note refers to the 1907 and 1908 French expeditions into Tibesti-Borkou as "deux reconnaissances", no permanent occupation having been attempted.

It brings out some interesting new points not mentioned in earlier notes and dispatches. On 8 February 1911, the Porte claimed for the Toubou (residents of Tibesti) the right to travel to Kanem "les mettant ainsi sur le même pied que les subjets Ottoman". On 24 February 1911, the Ottoman Ambassador expressed full reservations concerning title to the territory occupied by the Ajjer Tuareg (the Ghat-Djanet region).

The note goes on to describe the difficulties the French had had in trying to pin the Porte down to actually starting delimitation negotiations to resolve these problems, as had just been done in the 1910 treaty delimiting the Libya-Tunisia boundary. French protests of Ottoman activities in the region only met with Ottoman rejection of the 1899 Declaration and claims to Tibesti and the Djanet region.

The note concludes that the Libya-Algerian boundary delimitation should be pressed and that a French position in these negotiations should be adopted jointly with the Ministry of Colonies as well as with respect to the territories of Tibesti and Borkou:

> "Il serait sans doute expédient qu'une commission nommée par les deux ministres étudiât les titres de la France sur ces régions et fixât les grandes lignes des

> **instructions qui seraient données à nos plénipotentiaires à cet égard."**

Certainly, this was an acknowledgement by the Quai d'Orsay in March 1911 that there was no conventional boundary beyond Ghadamès between Libya and French territories and colonies.

9.9 CONSUL GENERAL DE FRANCE A TRIPOLI DE BARBARIE TO M. CRUPPI, MINISTRE DES AFFAIRES ETRANGERES, 6 APRIL 1911

This 1911 dispatch from the French Consul General in Tripoli (M. Séon) concerns the request by the French Foreign Ministry that he conduct an inquiry into the Ottoman claim that for 25 years they have had Tibesti under civilian administration as a *caya* of the *Sandjak* of Fezzan.

The Consul General obviously took seriously this assignment, whose difficulties he describes. His findings were these:

> *First*, the predecessor of Dr. Osman Effendi, the present *Kaïmakam* of Tibesti, was a Tibesti notable (Chaami), who received from the Ottoman Wali of Tripoli an annual gift of silver. This situation dated back some 10 years, but only for the past 5 years had this notable been given the title of *Kaïmakam*. The Consul General adds this gratuitous and unsupported remark:
>
> > "Inutile de dire que ce prétendu Kaïmakam n'a jamais exercé une function effective au Tibesti, au nom du Gouvernement Ottoman."
>
> The *Annuaire générale* of the Ottoman Empire for 1907 does not include Tibesti or Bardaï as a *Kaïmakamat*, but Bardaï does appear in the *Annuaire* for the first time in 1908 as a dependency of Fezzan with a Toubou notable as *Kaïmakam* of Tibesti; and Bardaï reappears in 1910 with Dr. Osman Effendi holding this civilian post.
>
> *Second*, Dr. Osman Effendi had been named to this post after the Young Turks took over and Samy Bey, an Ottoman officer, was named *Mutessarif* of Fezzan.
>
> *Third*, the Consul General's predecessor had had a conversation with Samy Bey in 1909 in Tripoli, during which the latter claimed that 12 Ottoman soldiers had occupied Bardaï for 25 years. The Consul General labelled this statement as a "mensonge" (a lie). Only in the past year, had a "corps de gendarmerie imperiale" of

> **some 10-20 men been stationed in Bardaï, and a budget request had been made to increase the fort to 100 persons.**

This report at least confirms civil Ottoman adminstration in Tibesti in 1908. It is interesting to note that, aside from the Kaïmakam, the occupying force were gendarmes (police) rather than military.

9.10 L'AMBASSADEUR DE FRANCE A CONSTANTINOPLE TO M. LE MINISTRE DES AFFAIRES ETRANGERES, (RENSEIGNEMENTS SUR LE TIBESTI) 9 MAY 1911

This 1911 dispatch from the French Ambassador to the Porte reveals his findings concerning the inquiry he was asked to make into the same matter as the French Consul General in Tripoli (Document 9) - the establishment of a Kaïmakam in Tibesti. It reveals the great interest and concern the French Government had over this display of sovereignty in the region by the Ottoman Government. The French Ambassador had already seen the report of the French Consul General, M. Séon (Document 9).

The dispatch confirms the fact that the first mention of Bardaï in the Annuaire officiel, as the headquarters of the Caza (Tibour Chardé) of the Sandjak of Fezzan, was in 1908. The Kaïmakam listed was Séfami Effendi - the predecessor of Dr. Osman Effendi. The dispatch also confirms M. Séon's views that the corps of gendarmes had not been installed until 1910.

However, the dispatch refers, as well, to an article in a Turkish journal written by the Ottoman Deputy in Tripoli (Mahmoud Hadjé Effendi) saying that an "Ottoman fonctionnaire" had been installed in Bardaï 32 years before, in 1879. The article said that Bardaï had been declared the capital of Tibesti by the Vali of Tripolitania, who appointed a Toubou chief (Ibrahim Tekoumi) as Kaïmakam, with an annual salary of 500 piastres (although never actually paid until 1908). The post remained in the Tekoumi family. The French Ambassador points out that the article lacked documentary support.

Finally, the dispatch mentions that Djanet appeared for the first time in the 1907 Annuaire as a Nahié, a dependency of the Caza of Ghat, under the Sandjak of Fezzan.

No. 10

SUPPLEMENTARY ANNEX, NO. 10

COMMENTARY ON DOCUMENTS FROM QUAI D'ORSAY FILE: N.S. TURQUIE 422, DOSSIER II

10.1 Ambassade Impériale Ottomane to M. de Selves, Ministre des Affaires Etrangères, 17 July 1911.

10.2 Capitaine Ducla, Commandant le Cercle de Bilma, to Lieutenant-Colonel, Commandant le Territoire Militaire du Niger, 12 May 1911.

10.3 Ministre des Colonies to M. le Ministre des Affaires Etrangères (Turcs au Tibesti), 30 October 1911.

10.4 Note pour le Ministre des Affaires Etrangères (l'occupation du Tibesti et du Borkou), 13 April 1912.

10.5 Ministre des Colonies to M. le Ministre des Affaires Etrangères (le Tibesti et le Borkou), 6 May 1912.

10.6 Telegram (N° 128) from Colonel Largeau, 27 May 1912.

10.7 Telegram (N° 126) from Colonel Largeau, 30 May 1912.

10.8 Telegram (N° 133T) from Colonel Largeau, 30 May 1912.

10.9 M. A. de France, Ministre de France en Egypte, to M. R. Poincaré, Président du Conseil, Ministre des Affaires Etrangères, 26 June 1912.

10.10 Translation of Response from Cheikh des Senoussya to letter from M. Bonnel de Mézières, 10 Zil Qada 1329.

10.11 Ministre des Colonies to M. le Président du Conseil, Ministre des Affaires Etrangères, 1 August 1912.

10.12 Gouverneur Général de l'Afrique Equatoriale Française to M. le Ministre des Colonies (l'Ennedi), 25 June 1912.

10.13 Ministre des Colonies to M. Le Président du Conseil, Ministre des Affaires Etrangères, au sujet du Borkou, 26 August 1912.

10.14 Note au sujet du Borkou pour le Ministre des Affaires Etrangères, 5 September 1912.

10.15 Ministre des Colonies to M. le Président du Conseil, Ministre des Affaires Etrangères, 8 November 1912.

10.16 Gérant de l'Agence Diplomatique de France en Egypte to M. R. Poincaré Président du Conseil, Ministre des Affaires Etrangères à Paris, 16 October 1912.

10.17 Ambassadeur de France à Constantinople to M. le Ministre des Affaires Etrangères, 9 December 1912.

10.18 Telegram dated 17 November 1912 to the Sultan from 48 Cheikh Sénoussi de Tripoli, Homs et Benghazi, 9 December 1912 (translation).

10.19 Telegram sent from Fort Lamy to the Ministère des Colonies à Paris, 13 December 1912.

10.20 Ministre des Colonies to Ministres des Affaires Etrangères (Borkou et Tibesti), 30 December 1912.

10.21 L'Ambassadeur de France à Constantinople to M. le Ministre des Affaires Etrangères (l'action Ottomane dans le Sahara Oriental), 24 January 1913.

10.22 M. A. de France, Ministre de France en Egypte, to M. S. Pichon, Ministre des Affaires Etrangères à Paris, 1 May 1913 - Dispatch No. 196.

10.23 Annex to Dispatch No. 196 from the Agence Diplomatique de France au Caire dated 2 May 1913 (translation).

10.24 M. A. de France, Ministre de France en Egypte, to M. Doumergue, Président du Conseil, Ministre des Affaires Etrangères, à Paris, 14 March 1914.

10.25 Annex to Dispatch No. 128 from Cairo dated 14 March 1914 (translation).

10.1 AMBASSADE IMPERIALE OTTOMANE TO M. DE SELVES, MINISTRE DES AFFAIRES ETRANGERES, 17 JULY 1911

This official Ottoman note verbale makes the following points:

- Tibesti, a caza of the sandjak of Fezzan, "est comparable en tout point, aux circonscriptions administratives de l'Empire";
- Borkou was, similarly, part of the Empire - through which the caravan route to Tripoli has run "de tout temps" and where sovereign Ottoman rights "se sont manifestés sans conteste".
- As France well knows, the 1899 Declaration is not opposable to the Ottoman Empire.
- The Porte looks forward to reaching an amiable understanding with the French Government in the forthcoming delimitation negotiations.

10.2 CAPITAINE DUCLA, COMMANDANT LE CERCLE DE BILMA, TO LIEUTENANT-COLONEL, COMMANDANT LE TERRITOIRE MILITAIRE DU NIGER, 12 MAY 1911

This dispatch is an account of Ottoman activity in Tibesti, covering much of the same ground as dispatches discussed in Supplementary Annex, No. 9. A few interesting additional points emerge from this document:

- The 1907 French raid on Aïn-Galakka (Capt. Bordeaux) was ineffective: the indigenous peoples refused peace offers and the Derde of the Toubou went to Mourzouk to seek help against the French[1];
- Help was forthcoming - the regular garrison at Aïn-Galakka was increased to 500 Tripolitanian arabs.
- In 1909, Bardaï was reinforced by the Derde with 20 Ottoman soldiers, who formed in Tibesti "une gendarmerie méhariste";
- A fort built out of rock, encircled by a deep ditch, was established in the Bardaï valley, the central point of nine surrounding villages;
- A fort was established at Tijerhi to assure free access of the Toubou to Fezzan;
- The Ottomans had begun to prevent rezzous by the Toubou.

The general assessment of the situation was very poor from the French standpoint as of May 1911.

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[1] See, Supplementary Annex, No. 9.5, where General Lasserre points out the ineffectiveness of the raid as well as the raid made in 1908.

10.3 MINISTRE DES COLONIES TO M. LE MINISTRE DES AFFAIRES ETRANGERES (TURCS AU TIBESTI), 30 OCTOBER 1911

This important dispatch reports that the Ottomans had constructed a block-house at Yao (south of Zouar in northern Borkou (Map LR 43 appearing at start of Annex 7)), adding the following:

> "... ce qui constituerait une manifestation indiscutable de l'occupation effective ottomane dans ces regions."

The Minister of Colonies goes on to say that, although Italy's recognition of the 1899 Declaration would appear to bar it from doing so - a reference to the invalid French thesis that in the 1900-1902 Accords Italy accepted the 1899 Declaration -, the moment Italian troops reached the Tripolitanian hinterland, Italy might substitute itself for the Ottoman claims[2].

Assuming the probability of Italy's taking over Libya, the Minister of Colonies feared difficulties with Italy in this region and suggested -

> "...une étude des moyens d'assurer d'une manière indiscutable nos droits à l'occupation des territoires de notre zone d'influence dans cette partie de l'Afrique."

This hardly comports with what Chad claims was only an Ottoman occupation "éphémère" of the borderlands.

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[2] It will be recalled that Italy declared war on the Ottoman Empire on 29 September 1911.

10.4 NOTE POUR LE MINISTRE DES AFFAIRES ETRANGERES (L'OCCUPATION DU TIBESTI ET DU BORKOU), 13 APRIL 1912

This note of April 1912 takes as its reference point the dispatch of 30 October 1911 of the Ministry of Colonies just discussed (10.3). It brings out the fact that the French Ministry of Foreign Affairs had opposed the intervention by French Military forces in the region for it would have pitted them against Ottoman troops and exposed France to the accusation of not remaining neutral in the Italo-Ottoman war.

Then the note mentions reports from Cairo that Colonel Largeau had entered into relations with the Head of the Senoussi. It also observes that the move of Ottoman and Senoussi forces north to oppose the Italians might create a convenient moment for the French to occupy Borkou and Tibesti rather than await the conclusion of peace. Otherwise the French might be confronted by "adversaires fanatisés et acculés dans leurs derniers retranchements".

This note of the Quai d'Orsay continues to hesitate about taking action in the light of having to preserve neutrality. It also feared repercussions from the Senoussi (referring to "l'influence considérable des confréries senoussistes dans les milieux islamiques") that might affect French relations with the Arab World and be felt through North Africa and, particularly, in Morocco. The note concludes that "il peut paraître prématuré de faire occuper par nos troupes le Tibesti et le Borkou".

This is a clear indication that the reason for the modus vivendi between French and Ottoman forces and the French failure to advance beyond the de facto line of approximately 15°N latitude into the borderlands before 1913 was dictated by high French policy.

10.5 MINISTRE DES COLONIES TO M. LE MINISTRE DES AFFAIRES ETRANGERES (LE TIBESTI ET LE BORKOU), 6 MAY 1912

Apparently the French Foreign Ministry adopted the position set out in the note just discussed (10.4) and so informed the Ministry of Colonies, who here promptly replies.

The dispatch includes information from the Governor General of the A.E.F. that the Ottomans were withdrawing in order to concentrate on fighting the Italians in the north. It goes on to say:

> "C'est donc aux seuls Khouans Senoussya que nous aurons à imposer la reconnaissance de nos droits sur le Sahara Oriental. La confrérie de Koufra regarde cette région comme son domaine et les déclarations du Cheikh Ahmed Chérif publiées par la presse arabe d'Egypte indiquent qu'il a laissé au Borkou, en venant prendre part à la guerre sainte contre les Italiens, un noyau de ses affiliés, afin de défendre 'ses terres' contre une action offensive des Français."

This dispatch refutes the notion advanced by Chad that the Senoussi had abandoned the borderlands when their headquarters was moved back to Koufra from Gouro in 1902. It refers to the French imposing their rights and to the proposed offensive military action of the French - hardly indications of peaceful occupation.

10.6 TELEGRAM (N° 128) FROM COLONEL LARGEAU, 27 MAY 1912

10.7 TELEGRAM (N° 126) FROM COLONEL LARGEAU, 30 MAY 1912

10.8 TELEGRAM (N° 133T) FROM COLONEL LARGEAU, 30 MAY 1912

These three interrelated telegrams of Colonel Largeau were dispatched in May 1912. The first of these documents brings out the following:

- When the Ottomans vacated their garrison established near the zawiya at Aïn-Galakka, they left Abdullah Toueur, the Senoussi sheikh, in charge and designated him as representative of the Ottoman Government.

- The Senoussi sheikh wrote to the French Commander in Kanem (part of the A.O.F.), his letter crossing one written by Colonel Largeau, the French military commander of the A.E.F. (territory of Chad), in which the latter advised the Senoussi of a movement of camel-mounted French troops into the Djourat region for rest and rehabilitation of their camels. As Map LR 43 (appearing at start of Annex 7) shows, this region lies southwest of Faya in Borkou between 16° and 18°N latitude, and hence north of the approximate de facto line of 15°N.

  Comment: Why did Colonel Largeau feel obliged to write to the Ottoman-Senoussi administration in Aïn-Galakka about these activities? The answer would appear to be because these camels were going to be taken to graze north of the de facto line of approximately 15° N latitude.

- Colonel Largeau states that he intended to contact Aïn-Galakka and to maintain the position that, although the French did not recognise the Ottoman occupation of Borkou, at the same time, they did not wish to take advantage of the present Ottoman difficulties to force down the Ottoman flag at Aïn-Galakka:

"... nous respectons donc la situation acquise jusqu'à nouvel ordre. On peut espérer ainsi que nous aurons

> un modus vivendi acceptable (subject to the reservations already expressed)."

The second telegram of Colonel Largeau contains the text of Sidi Toueur's letter to Colonel Largeau reporting that the Head of the Senoussi had received a letter dated 8 June 1911 from the French representative in Cairo and had replied to it. (This refers to the Bonnel de Mezières exchange described in Libya's Memorial (para. 4.153, et seq.).) Colonel Largeau suggests that the idea of fixing a line that would give to the Senoussi territory that included Oum Chalouba (south of 16°N latitude) must reflect a misunderstanding.

The third telegram of Colonel Largeau reports receipt of a new letter from Sidi Toueur in Aïn Galakka, in which the latter stated that under the recent accord with France's representative in Cairo the limit of French territory was established at Arada (15°N latitude).

Colonel Largeau reacts strongly in this cable. French troops were feeding their camels in Djourab and in Ennedi as far north as Oueyta, they were pursuing certain rebels of Ouadaï who had committed certain reprehensible acts (Map LR 43). If the report of promises allegedly made in Cairo to the Senoussi were correct, then these French activities would be north of a Arada-Ziguei line (as shown on the Map LR 43). Not knowing the situation, Colonel Largeau bluffed his way in his response to the Senoussi, while awaiting further information.

10.9 M. A. DE FRANCE, MINISTRE DE FRANCE EN EGYPTE, TO M. R. POINCARE, PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES, 26 JUNE 1912

10.10 TRANSLATION OF RESPONSE FROM CHEIKH DES SENOUSSYA TO LETTER FROM M. BONNEL DE MEZIERES, 10 ZIL QADA 1329

The dispatch of M. Defrance of the French Consulate in Cairo to Paris encloses the text of the letter of the Head of the Senoussi (10.10), responding to the proposals of M. Bonnel de Mezières, described as "Chargé de Mission par M. le Ministre des Colonies". M. Defrance suggests the broad lines of a reply.

The letter of the Head of the Senoussi (10.10) contains these interesting elements:

- When the French started to move north and east of Lake Chad, the Senoussi thought they would behave like the English, when the Senoussi established themselves at Djaraboub (in Cyrenaica); but this proved not to be so: the Senoussi were attacked by the French in Kanem only two years after the Senoussi established themselves there (a reference to the destruction of the zawiya at Bir Alali in 1902).

- It recounts the French brutality and destruction of zawiyas.

- The letter then sets out the Senoussi conditions:

    - French troops to return to positions in the region of Bir Alali;

    - The boundary to be fixed along a line between Koussori (in Ouadaï southeast of Lake Chad) and Arada on the 15° N line of latitude;

    - Hostilities were to cease entirely on both sides;

    - The books burnt and arms taken from the zawiyas were to be replaced (some 700 books at Bir Alali).

10.11 MINISTRE DES COLONIES TO M. LE PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES, 1 AUGUST 1912

This dispatch from the Minister of Colonies to the Minister of Foreign Affairs concerns the Senoussi response to the proposal made by M. Bonnel de Mezières (10.10) and M. Defrance's proposal as to how to reply to it (10.9).

The Minister of Colonies says that the sort of polite response suggested from Cairo would not be adequate - it would be impossible to allow the Senoussi to call into question the effect of the 1899 declaration. The dispatch indicates that instructions had been sent to Colonel Largeau to inform the Head of the Senoussi that the French wished to "vivre en bons termes" with the Senoussi but that the French could not allow -

> "...que notre action civilisatrice dans le centre africain
> pût être discutée par les gens de Koufra."

> Comment: *This measure must have gotten a laugh in Koufra. In his last letter the Head of the Senoussi was trying to have replaced the 700 books destroyed by French troops when they pillaged the zawiya in Bir Alali. But the dispatch also shows that the French were dealing with the Senoussi as a political entity as well - as a force to be dealt with in the region, which is hardly the picture painted of the Senoussi in the CC-M.*

The dispatch also refers to the "affiliés" of the Senoussi - a reference to the indigenous Senoussi tribes, particularly the Toubou and the Awlad Sulaiman.

The Ministry of Colonies states that it was regrettable that the propositions made by M. Bonnel de Mezières had led the Senoussi to wish to discuss boundaries with the French; and he indicates that Colonel Largeau had been informed that it was not France's Cairo representative that had been in correspondence with the Senoussi but M. Bonnel de Mezières - and that nothing had changed as to France's position concerning that status of regions within France's zone of influence.

> Comment: *The French note does not question the status of the Senoussi to discuss boundary questions but only the misunderstanding that had arisen from the proposition advanced by M. Bonnel de Mezières.*

10.12 GOUVERNEUR GENERAL DE L'AFRIQUE EQUATORIALE FRANÇAISE TO M. LE MINISTRE DES COLONIES (L'ENNEDI), 25 JUNE 1912

This dispatch of June 1912 from M. Merlin, Governor General of the A.E.F., to the Minister of Colonies is referred to in the dispatch just discussed (10.11). It concerns the boundary the Senoussi had called upon the French to respect, as pointed out by Colonel Largeau (10.7).

M. Merlin refers to Colonel Largeau's letter to the Ottomans of 7 September 1911 in which he set forth France's reservations to the Ottoman occupation of the borderlands. He had not stated that Oum Chalouba was the limit of Senoussi territory in that letter and had mentioned as French the following regions (Map LR 43 appearing at start of Annex 7):

In Kanem:
- Le Manga (Mongo)
- L'Eguei
- The Bahr el Ghazal as far as Koro Toro
- Mortcha (Oueyta, Ouergalla and Oum Chalouba)
- Ennedi (all of)

The regions of Toro, Djourab and Bodélé were said to belong neither to Kanem nor Borkou but were traversed by nomads. Colonel Largeau added in this letter that -

> "France continuera à user du droit de passage de Koro par le Djourab et Boskhalia sur Oueyta, c'est à dire d'un point français à un autre point français..."

> *Comment: It will be noted that in spite of this letter the Ottomans proceeded to occupy, in 1911-1912, Aïn-Galakka, Faya, Fada, Baki and Oum Chalouba. Moreover, none of the regions named by Colonel Largeau were north of 18°N.*

In this 1912 dispatch, M. Merlin refers to the "véritables frontières" established by the 1899 Declaration. This may have been the French position, but certainly was not that of Great Britain, the co-signatory of this treaty. M. Merlin ends his dispatch by deploring the troubles created by M. Bonnel de Mezières ("l'ingérence de personnes privées).

10.13 MINISTRE DES COLONIES TO M. LE PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES, AU SUJET DU BORKOU, 26 AUGUST 1912

10.14 NOTE AU SUJET DU BORKOU POUR LE MINISTRE DES AFFAIRES ETRANGERES, 5 SEPTEMBER 1912

10.15 MINISTRE DES COLONIES TO M. LE PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES, 8 NOVEMBER 1912

The dispatch of 26 August 1912 of the Minister of Colonies and the Note of 5 September prepared in the Quai d'Orsay deal with the continuing question of whether the time was ripe for French forces to move north into Borkou and Tibesti. The Ottomans were withdrawing in order to combat the Italians in the north of Libya. The Minister of Colonies, the Governor General of the A.E.F. (M. Merlin) and Colonel Largeau all wanted to move northward into the borderlands.

> *Comment: This clearly indicated that even in August 1912 French forces had not moved north of the de facto line (15°N).*

The Quai d'Orsay's note suggests that new facts justified a change of position at the political level: attacks by the Toubou in Borkou against Kanem; the visit of an Austrian explorer, seen as a trouble-maker, who had arranged with the Senoussi to explore Tibesti-Borkou.

> *Comment: It is of particular interest that this Austrian explorer approached the Senoussi to arrange this trip into Tibesti and Borkou.*

The note concludes that a move into Borkou should be considered. Two precautions should be observed: (i) avoid having it seen as a war against the Senoussi; (ii) avoid any action against Ottoman detachments.

Document 10.15, a dispatch of the Minister of Colonies dated 8 November 1912, indicates that the French Government had decided to delay any move into the borderlands pending a visit to Paris of M. Merlin and Colonel Largeau.

10.16 GERANT DE L'AGENCE DIPLOMATIQUE DE FRANCE EN EGYPTE TO M. R. POINCARE PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES A PARIS, 16 OCTOBER 1912

10.17 AMBASSADEUR DE FRANCE A CONSTANTINOPLE TO M. LE MINISTRE DES AFFAIRES ETRANGERES, 9 DECEMBER 1912

10.18 TELEGRAM DATED 17 NOVEMBER 1912 TO THE SULTAN FROM 48 CHEIKH SENOUSSI DE TRIPOLI, HOMS ET BENGHAZI, 9 DECEMBER 1912 (TRANSLATION)

These documents deal with Senoussi-Italian and Senoussi-Ottoman relations at the end of 1912.

Document 10.16 (a dispatch from Egypt) reveals approaches by Italy to the Head of the Senoussi. An Iraqi intermediary had been appointed to conduct negotiations. The French Ambassador considers the Senoussi's options.

Document 10.17 is a report from Constantinople (M. Bompard) reporting the presence in Rome of envoys of the Head of the Senoussi. It observes that, although the Senoussi peoples in Cyrenaica were fighting the Italians, the Head of the Senoussi "aurait ... observé la plus grande réserve". The dispatch speculates over whether a deal with the Italians was on the cards, under which the Koufra oasis, where the Head of the Senoussi made his headquarters, would be independent.

Document 10.18 is a message from 48 Senoussi sheikhs of Tripoli, Homs and Benghazi to the Sultan deploring the Treaty of Ouchy and paying homage to him.

10.19 TELEGRAM SENT FROM FORT LAMY TO THE MINISTERE DES COLONIES A PARIS, 13 DECEMBER 1912

This is a telegram from Fort Lamy (territoire du Tchad) to the Ministry of Colonies, dated 13 December 1912, reporting that at the beginning of November an Ottoman representative from Aïn Galakka had established himself with several other Turks at Baki (17°N latitude) in Ennedi (Map LR 43 appearing at start of Annex 7) and planned to construct a "poste d'occupation". The local tribes were already paying them tribute and seeking their protection. They had declared that Ennedi and all the country as far south as Oum Chalouba (just south of 16°N) was Ottoman territory. They were also collecting tributes from caravans going north to Ounianga.

The cable reports the French commander at Ouadaï had protested this occupation described as being "sans importance au point de vue militaire" but of importance politically, since it was likely to stir up trouble in Ouadaï, Dar-Sila and Darfour.

The sender of the telegram (presumably Colonel Largeau's deputy, for the Colonel had gone to Paris - 10.15) said that he intended "de rester strictement dans les limites fixées par le Colonel Largeau à notre action sur la frontière nord et frontière est". This may be a reference to Colonel Largeau's letter of 7 September 1911 summarised in 10.12.

10.20 MINISTRE DES COLONIES TO MINISTRE DES AFFAIRES ETRANGERES (BORKOU ET TIBESTI), 30 DECEMBER 1912

This dispatch of the Minister of Colonies of 30 December 1912 followed meetings in Paris with M. Merlin (A.E.F.) and Colonel Largeau (Military Commander of Chad). The decision was to leave further action to the local authorities "comme de simples questions de police saharienne".

The Minister reports that Colonel Largeau felt that -

> "... l'affirmation effective de nos droits sur le Borkou et le Tibesti peut sans inconvénients être differée jusqu'à l'hiver 1913-1914, c'est-à-dire après la mise en oeuvre d'une action politique préalable."

Comment: Two things stand out here: (i) there is no talk of effective occupation, only "affirmation de nos droits"; (ii) the need for prior political action before any military move north no doubt referred to delimitation negotiations to be undertaken with Italy, successor to the Ottoman rights and titles.

10.21 L'AMBASSADEUR DE FRANCE A CONSTANTINOPLE TO M. LE MINISTRE DES AFFAIRES ETRANGERES (L'ACTION OTTOMANE DANS LE SAHARA ORIENTAL), 24 JANUARY 1913

Ambassador Bompard in Constantinople reports here a conversation with the Ottoman Foreign Ministry about the Ottoman occupation of Ennedi.

The latter said that orders had been given for all Ottoman military to evacuate Tripolitania and Cyrenaica and return to Turkey. Some had disobeyed, but their actions were no longer the responsibility of the Porte.

Comment: This message brings out the fact that Ottoman evacuation of the borderlands was considered by the Porte as part of the order to evacuate Libya.

10.22 M. A. DEFRANCE, MINISTRE DE FRANCE EN EGYPTE, TO M. S. PICHON, MINISTRE DES AFFAIRES ETRANGERES A PARIS, 1 MAY 1913 - DISPATCH NO. 196

10.23 ANNEX TO DISPATCH NO. 196 FROM THE AGENCE DIPLOMATIQUE DE FRANCE AU CAIRE DATED 2 MAY 1913 (TRANSLATION)

These documents of May 1913 concern the polite French response to the letter of the Head of the Senoussi referred to earlier (10.10). In particular, M. Defrance's dispatch to Paris indicated that his letter was intended to -

> "... repousser la prétention de considérer Arada[3] comme la limite de notre action vers le Nord ...."

M. Defrance's magnificently pompous letter to the Head of the Senoussi is well worth reading for entertainment: it starts "Au nom d'Allah" and describes the writer as "Agent Diplomatique du Sublime Gouvernement Français en Egypte[4]"!

The following points emerge from this letter:

- M. Bonnel de Mezières had been authorized to write to the Senoussi but, it is asserted, he did not have the right "de vous parler officiellement en son nom";

  Comment: A strange distinction at best.

- It is denied that M. Bonnel de Mezières intended to indicate Arada as the boundary between the Senoussi and the French;

- It misleadingly refers to the 1899 Declaration as having been concluded "entre les grandes Nations et les Sublimes Gouvernements";

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[3] Located on the line of 15°N latitude.

[4] Emphasis added. Another choice passage: "En lisant votre honorée missive, Notrecoeur fut inondé de joie et de bonheur ... Après avoir baigné nos yeux de la lecture de votre missive, etc."

- **It invites the Senoussi to enter into relations with the French.**

Comment: This is a clear refutation that the French regarded the region controlled by the Senoussi as terra nullius.

10.24 M. A. DEFRANCE, MINISTRE DE FRANCE EN EGYPTE, TO M. DOUMERGUE, PRESIDENT DU CONSEIL, MINISTRE DES AFFAIRES ETRANGERES A PARIS,

14 MARCH 1914

This dispatch of March 1914 from M. Defrance in Cairo passes on a newspaper report that the Head of the Senoussi had refused to enter into an arrangement with the Italians and that -

> "... en conséquence la suzeraineté italienne ne sera jamais reconnue par lui sur les territoires qui dépendent de son autorité."

The text of the letter of the Head of the Senoussi explaining his position in this regard is annexed (10.25).

10.25 ANNEX TO DISPATCH NO. 128 FROM CAIRO DATED 14 MARCH 1914 (TRANSLATION)

This is the reported text (in extracts) of the letter of the Head of the Senoussi, just referred to (10.24) explaining his refusal to recognize Italian sovereignty.

No. 11

SUPPLEMENTARY ANNEX, NO. 11

COMMENTARY ON DOCUMENTS FROM FRENCH ARCHIVES, AIX-EN-PROVENCE

11.1 Ministre de la France d'Outre-Mer to Ministre des Affaires Etrangères, 22 August 1951.

This dispatch stresses the importance of securing Libya's "explicit recognition of the 1899 boundary between Libya and Chad".

11.2 Group of Dispatches, December 1954 - August 1955, between the Ministère de la France d'Outre-Mer and the Quai d'Orsay.

The following points of interest emerge from these documents:

- A hand-written note appears on the unsigned draft of 31 December 1954, apparently placed there in the Ministère de la France d'Outre-Mer, to the effect that the 1899 Declaration only dealt with the sector between the Tropic of Cancer and 24°E longitude; as to the sector between Toummo and the Tropic of Cancer the note says "rien de fait" - in other words, that there was no conventional boundary;

- A note of 21 December 1954 of the Directeur des Affaires Politiques stressing the need to define the French position on Libyan boundaries as well as regarding the "accord frontalier" (the régime frontalier).

- The Defense Ministry's summary (10 January 1955) of the first phase of the Libya-France negotiations brings out the following: (i) the question of delimiting the boundary was raised but not examined closely since the Libyan delegation lacked documentation; (ii) as a result, the French view was not presented in detail; and (iii) Libya's basic position was "que la Libye réclamerait les frontières, que lui avait données la décision de l'O.N.U. reconnaissant son existence indépendente".

Comment: *In other words, uti possidetis juris on the critical date, 24 December 1951.*

- Insistence by Outre-Mer (10 February, 22 July 1955) on not questioning the pre-1935 international arrangements, that is the Franco-Italian Convention of 12 September 1919 and the 1899 Declaration: "Ces deux textes doivent servir de base à la délimitation de la frontière ...".

Comment: *Note the word delimitation.*

- Fear of Libyan occupation of Aouzou and French plans to combat this (23 February, 27 June 1955);

- A hand-written note of 11 August 1955 to which is appended an account in France-Soir of 12 August 1955 of the signing of the 1955 Treaty; the note says this concerning the Treaty: "Rien n'a été dit concernant de problème frontières."

Comment: *This most certainly suggests that the Treaty had not resolved Libya's boundaries.*

11.3 Group of documents, 1911-1916, concerning the French move into the borderlands (north of approximately 15°N latitude).

These documents bring out a number of interesting points:

- Colonel Largeau's letters of 10 May and 2 September 1911 protesting the Ottoman occupation of Borkou constitute acknowledgment by France of the Ottoman presence in the borderlands;

- The Minister of Colonies' concern (2 October 1911) that the Ottoman blockhouse to be constructed at Yao would constitute "une manifestation indiscutable de l'occupation effective ottomane dans ces régions"; and his concern that Italy, if it obtains sovereignty over Tripolitania, would pursue the Ottoman claim;

- The French Foreign Minister's reliance on the alleged Italian recognition of the 1899 Declaration (6 November 1911) as assuring against any Italian protest against French occupation of Tibesti;

Comment: *This prediction proved to be wrong: Italy did protest France's move into Tibesti.*

- Ottoman Captain Rifky's letter to Colonel Largeau of 14 March 1912, as he was about to leave Aïn Galakka, mentions the limit of France's zone of influence as ending at Arada (15°N); in his dispatch of 25 June 1912 to the Minister of Colonies, Colonel Largeau registers his surprise;

- An assessemnt of the situation in Tibesti by the Governer General of the A.O.F. (22 March 1912) brings out the continuing threat from the Senoussi and the local peoples after the Ottomans started to leave;

- The A.E.F. dispatch of 29 March 1913 (1st page, pages 2 and 3 are illegible) reveals that the Ottomans did not evacuate Baki (in Ennedi at 17°N) until 14 March 1913;

- The fact that the French forces were under instructions not to move north into the borderlands until formally instructed to do so by Paris (25 May 1912);

- In his dispatches to the Governor Generals of the A.O.F. and A.E.F. of 21 June 1913, the Minister of Colonies mentions that Colonel Largeau had been authorized to reach agreement wih the Senoussi allowing them to "coloniser au Borkou sans qu'il puisse en résulter aucune atténuation de la souveraineté complète que nous possédons" by virtue of the 1899 Declarations;

- The planned occupation of Tibesti was not intended to "réaliser une occupation complète et une organisation administrative du Tibesti" (21 July 1913);

- Temporary occupation of Bardaï by the French forces on 23 June 1914 and pursuit of the Derde; indications of the peoples' hostility in the regions of Zouar and Aouzou (5 August 1914);

- The desire of the local French commanders to evacuate Gouro, Ounianga and Bardaï in 1916; the complete evacuation of Bardaï and Zouar (until 1929-1930); the instructions from Paris not to evacuate Gouro.

11.4 Group of Documents 1926-1930.

These documents show clearly that Tibesti (including the forts of Bardaï and Zouar) had been completly abandoned and left unoccupied by the French between 1916 and 1929-1930. They also bring out the continuing authority of the Senoussi (23 July 1926). In the Exposé des motifs for the 1930 Budget of the Ministry of Colonies, the statement appears that Tibesti ceased to be occupied by French military forces in 1916.

11.5 Two 1949 Documents, which bring out the French fear of the repercussions that creating Libya as an independent State might have; they emphasize the Senoussi-Libya tie and the troubles this might cause for France.

COUR INTERNATIONALE DE JUSTICE

DIFFEREND TERRITORIAL
(JAMAHIRIYA ARABE LIBYENNE C/ TCHAD)

REPLIQUE DU GOUVERNEMENT DE LA REPUBLIQUE DU TCHAD

LIVRE I

14 SEPTEMBRE 1992

INTRODUCTION

OBJET ET PLAN DE LA REPLIQUE

0.01 Lors de la réunion que le Président de la Cour a tenue avec les représentants des parties le 27 mars 1992 pour se renseigner auprès d'elles sur la suite de la procédure, l'Agent de la République du Tchad avait fait part des doutes du Gouvernement tchadien sur la nécessité d'une Réplique qui viendrait s'ajouter aux écritures, déjà considérables, des parties : la Jamahiriya arabe libyenne avait déposé un Mémoire de 479 pages assorti de six volumes d'annexes, totalisant 2.608 pages, puis un Contre-Mémoire de 419 pages avec 612 pages d'annexes ; pour sa part le Mémoire du Tchad comportait 423 pages, accompagnées de 3.035 pages d'annexes réparties en six volumes et son Contre-Mémoire, 590 pages, auxquelles avaient été joints un atlas cartographique de 161 pages et deux volumes d'annexes de 920 pages au total. Sauf à ce que les parties se répétassent, il était donc peu vraisemblable qu'un troisième tour de plaidoiries écrites fût encore nécessaire, étant donné qu'en tout état de cause leurs exposés oraux leur donneraient l'occasion de présenter leurs thèses respectives en mettant l'accent sur les points qui les divisent.

0.02 La partie libyenne n'a pas partagé cette façon de voir et, par son ordonnance en date du 14 avril 1992, la Cour a décidé d'autoriser la présentation par chacune des parties d'une réplique avant le 14 septembre 1992. La présente réplique est soumise conformément à cette autorisation.

0.03 La lecture attentive du Contre-Mémoire de la Libye a cependant renforcé la République du Tchad dans la conviction qu'une réplique n'était pas indispensable : elle a, pour sa part, répondu par avance à la quasi-totalité des arguments avancés dans le Contre-Mémoire libyen. C'est donc surtout par déférence pour la Cour qu'elle a, finalement, décidé de présenter une brève réplique.

0.04 Au demeurant, pour éviter d'alourdir inutilement un dossier déjà fort volumineux, la République du Tchad s'abstiendra de répéter son argumentation antérieure, qu'elle maintient dans son intégralité et, conformément aux prescriptions de l'article 49, paragraphe 3, du Règlement de la Cour, elle se limitera à réfuter les quelques arguments nouveaux figurant dans le Contre-Mémoire de la Libye.

0.05 La présente réplique abordera donc successivement les points suivants :

- la présentation des thèses des parties devant la Cour (Chapitre I) ;
- l'opposabilité à l'Italie (et à la Libye) de la délimitation de 1899-1919 (chapitre II) ;
- la portée de l'article 13 du Traité de Londres de 1915 et la succession de la Libye à l'Italie (chapitre III) ;
- la consolidation progressive du titre français (puis tchadien) (chapitre IV) ;
- la portée du Traité franco-libyen du 10 août 1955 - Bonne foi et droit des traités (chapitre V).

CHAPITRE I.

LA PRESENTATION DES THESES DES PARTIES A LA COUR

1.01 La République du Tchad, qui se félicite de l'approche plus juridique retenue par la partie libyenne dans son Contre-Mémoire, n'en a pas moins été choquée par certaines allégations inutilement polémiques. Elle s'abstiendra d'y répondre.

1.02 En revanche, elle souhaite attirer respectueusement l'attention de la Cour sur certains aspects regrettables de la présentation de l'affaire par la Libye. En particulier :

i) Le Contre-Mémoire libyen présente des vues singulières sur le rôle respectif des forums politiques et des forums judiciaires dans le cadre d'un différend international (Section 1.).

ii) Le Gouvernement tchadien ne peut accepter certaines des allégations libyennes en ce qui concerne la production de documents devant la Cour (Section 2.). Et,

iii) La partie libyenne tout en relevant, à juste titre, que la République du Tchad étaie ses conclusions par trois séries d'argumentations, déforme celles-ci considérablement (Section 3.).

SECTION 1. L'ETONNANTE THESE LIBYENNE SUR LE ROLE RESPECTIF DES FORUMS POLITIQUES ET JUDICIAIRES

1.03 Dans ses précédentes écritures, la République du Tchad a mis l'accent sur les silences révélateurs gardés par la Libye en maintes circonstances dans lesquelles on se serait attendu à ce qu'elle expose son point de vue. Elle a également fait remarquer qu'en d'autres occasions, la

Libye s'était exprimée et avait défini l'objet du litige l'opposant au Tchad beaucoup plus restrictivement qu'elle le fait devant la Cour. La République du Tchad a montré dans son Contre-Mémoire les conséquences juridiques que l'on devait tirer tant de ces silences que de ces affirmations au regard des principes de la bonne foi, de l'acquiescement et de l'estoppel (v. not. CM/T, par. 2.96 à 2.118, 4.52 à 4.82 ou 9.106 à 9.125).

1.04 Pour tenter d'échapper à ces conséquences, la Libye a, dans son propre Contre-Mémoire, forgé une théorie fort originale qui peut être résumée ainsi : il ne convient pas de discuter de problèmes juridiques au sein de forums politiques ni d'y présenter des arguments de nature juridique ; mais, dans la mesure où de tels arguments ont effectivement été invoqués, il convient de faire comme si ils ne l'avaient pas été. Une telle position est clairement intenable ; même s'il faut faire une distinction entre les silences d'une part et les déclarations d'autre part, dans l'une et l'autre hypothèses, la thèse libyenne repose sur une séparation rigide, artificielle et inadmissible, entre les forums politiques et les forums judiciaires.

a) Les conséquences juridiques du silence gardé dans les enceintes politiques

1.05 Comme la République du Tchad l'a montré, la Libye s'est, durant de très nombreuses années, abstenue de faire valoir la moindre revendication à l'égard du Tchad, dans toutes les circonstances qui s'y seraient prêtées :

- les autorités libyennes n'émirent aucun doute sur les frontières méridionales de leur pays durant le processus de décolonisation (*cf.* M/T, pp. 233-234),

- non plus qu'au moment de l'accession à l'indépendance (*cf.* M/T, pp. 240 - 241),

- ou à l'occasion des débats relatifs au Tchad avant l'indépendance de celui-ci (*cf.* CM/T, par. 4.56-4.58),

- pas davantage que lors de la première Conférence des Chefs d'Etat et de Gouvernement de l'OUA qui eut lieu au Caire en 1964 (*cf.* CM/T, par. 4.59 et s.),

- ou à la suite de la première plainte du Tchad devant le Conseil de sécurité (*cf.* M/T, pp. 36-37),

- ou de l'examen du litige par l'OUA à partir de 1977 (*cf.* CM/T, par. 2.30).

1.06 Pour expliquer ces silences éloquents, la partie libyenne invoque un argument extraordinaire : "Unlike Chad, Libya avoided presenting its case before such political forums as the U.N. or the O.A.U. For Libya considers this territorial dispute to be one for resolution in accordance with the principles and rules of international law " (CM/L, par. 1.61). Ceci ne l'empêche d'ailleurs pas de trouver une autre explication à ses silences : elle aurait ignoré les "revendications" ("claims") françaises puis tchadiennes (*cf.* CM/L, par. 8.07 et 8.08).

1.07 Ce dernier point ne peut évidemment être soutenu : les débats qui ont eu lieu aux Nations Unies avant la décolonisation de la Libye, l'incident d'Aozou, la négociation du Traité de 1955, puis les plaintes tchadiennes devant l'OUA et les Nations Unies ne pouvaient laisser aucun doute sur les positions, constantes, de la France puis du Tchad.

1.08 Quant à l'idée selon laquelle il conviendrait de s'abstenir de présenter des arguments juridiques devant un organe politique, elle n'est pas mieux fondée.

1.09 Certes, le Tchad ne prétend pas "that Libya is estopped from presenting its case to the Court because it failed to do so to the Security Council" (CM/L, par. 1.3.), et elle demeure libre de présenter à la Cour les arguments qu'elle juge pertinents. Mais il est douteux que, comme elle le croit, elle ait, ce faisant, "adopted the wiser course" (CM/L, par. 1.31). C'est en effet méconnaître l'importance que les organes arbitraux ou juridictionnels attachent, d'une manière générale, à l'attitude des Etats dans les forums politiques (v. *infra* par. 1.14 et 1.16 et s.) et, notamment, à leur silence (outre la jurisprudence citée dans le Contre-Mémoire tchadien, CM/T, pars. 2.112 et 2.113, v. not. la sentence de l'arbitre Max HUBER dans l'affaire de l'Ile de Palmas, R.G.D.I.P. 1935, pp. 169 et 198 ou les arbitrages rendus dans les affaires de Grisbadarna, R.S.A.N.U. XI, p. 161, de la Baie de Delagoa, LA PRADELLE et POLITIS, Recueil des arbitrages internationaux, vol. III, Eds. internationales, Paris, 1954, p. 637, ou de la Frontière Guatemala-Honduras, R.S.A.N.U. II, p. 1309, et l'arrêt de la C.I.J en date du 26 juin 1992, Certaines terres à phosphates à Nauru, §§ 14 à 16).

1.10 La situation à cet égard a été bien résumée dans un ouvrage récent : "...when a participant is definitely expected to react in some manner or other, abstention from making any communication may become a good basis for formation of specific and stable expectations. These occasions are, generally speaking, those on which a participant is expected either to protest against something or accept it expressely or in silence" -ce qui, comme la République du Tchad l'a montré, était très précisément le cas dans les diverses circonstances, rappelées *supra* (par. 1.05). "Failure to protest can have consequences affecting the establishment or maintenance of claims to territories or situations concerning territories. Absence of protests from actual or potential rival claimants assists in the establishment of a claim. It strengthens the expectation of conformity of the claim to world public order. The rival claimant who remains silent in the face of activities to establish the claim may be considered to have "acquiesced in" the claim, or by implication "recognized" the claim as legitimate, and is not permited later to dispute it" (B.S. MURTY, The International Law of Diplomacy, (New Haven Press, 1989, p. 595).

b) Les conséquences juridiques des positions exprimées dans les enceintes politiques

1.11 Le comportement de la Libye dans les forums politiques internationaux ne se réduit d'ailleurs pas à son seul silence. Son attitude est plus complexe : elle s'est à la fois enfermée dans un mutisme complet dans toutes le circonstances dans lesquelles on aurait pu s'attendre à ce qu'elle protestât, et elle a, en d'autres occasions, exprimé des revendications précises qu'elle préfèrerait oublier ou faire oublier aujourd'hui.

1.12 Ces revendications épisodiques ont porté exclusivement sur l'appartenance de la bande d'Aozou à la Libye, que ce soit :

- lors de certaines négociations bilatérales avec le Tchad (*cf.* CM/T, par. 2.88),
- à l'Assemblée générale des Nations Unies (*cf.* M/T, p. 337 ; CM/T, par. 2.54, 2.88 ; v. aussi M/T, annexe 284),
- au Conseil de sécurité (*cf.* M/T, pp. 334 ou 339 ; CM/T 2.32 ou 2.53),
- à l'O.U.A. et, en particulier, devant le Comité *ad hoc* (*cf.* CM/T, par. 2.35, 2.36 ou 2.78).

1.13 Contrairement à ce que semble penser la Libye (*CM/L*, par. 1.61), ces déclarations, quand bien même elles ont été faites dans des enceintes politiques sont tout à fait pertinentes devant un organe judiciaire tel que la Cour. Celle-ci se fonde continuellement sur l'attitude adoptée par les Etats dans de tels forums et en tire des conséquences juridiques.

1.14 Un exemple frappant en est donné par l'affaire des *Essais nucléaires* dans laquelle la Cour a estimé que des déclarations du Gouvernement français, annonçant son intention de mettre fin aux essais, "faites publiquement *en dehors de la Cour*", et notamment devant l'Assemblée générale des Nations Unies, étaient valides et que "leurs conséquences juridiques [devaient] être envisagées dans le cadre général de la sécurité des relations internationales et de la confiance mutuelle si indispensable dans les rapports entre Etats" (C.I.J., *Rec.* 1974, § 51, p. 269 - souligné par la République du Tchad). De la même manière, dans son arrêt du 26 juin 1992, la Cour a longuement examiné les déclarations faites par les représentants du territoire sous tutelle de Nauru et par ceux de l'Autorité administrante, tant lors des pourparlers qui ont mené à l'indépendance que devant les organes des Nations Unies (*Certaines terres à phosphates à Nauru*, §§ 15 à 20).

1.15 Les déclarations d'un représentant libyen à l'Assemblée générale, au Conseil de sécurité ou à l'O.U.A. ne sont pas nécessairement la preuve d'une intention d'être obligé juridiquement, mais elles constituent assurément la preuve de la conviction du Gouvernement libyen sur l'existence -ou non- d'un différend et, s'il existe, sur sa portée. Les Etats rassemblés dans de telles instances sont, comme la Cour elle-même, "en droit de partir de la présomption que ces déclarations n'ont pas été faites *in vacuo*" (C.I.J, *Rec.* 1974, § 50, p. 269) et que, lorsqu'ils prennent la parole pendant les débats solennels qui font l'objet de comptes-rendus officiels, les délégués de la Libye le font avec l'intention d'être pris au sérieux et que les mots qu'ils emploient engagent effectivement le pays qu'ils représentent.

c) La distinction rigide faite par la Libye entre forums politiques et forums judiciaires est totalement artificielle.

1.16 En s'efforçant d'éviter que la Cour prenne en considération l'attitude positive (déclarations) ou négative (silences) qu'elle a adoptée devant les organes politiques des Nations Unies ou de l'O.U.A., la Libye méconnaît les rapports étroits qui existent entre forums politiques et organes juridiques et, au-delà, entre le droit international et les relations internationales.

1.17 Dans son célèbre ouvrage sur The Function of Law in the International Community, Sir Hersch LAUTERPACH a ironisé sur les aspirations d'un savant auteur qui, "anxious to preserve the strictly judicial character of the Permanent Court of International Justice, suggested that the Court should refrain from dealing with political questions" : "A survey of the work of the Court up to date would show that a strict adherence to this counsel of caution would mean a speedy and radical liquidation of the activities of the Court" (Clarendon Press, Oxford, 1933, p. 155). Cette remarque conserve tout son sens aujourd'hui.

1.18 "Organe judiciaire principal des Nations Unies", la Cour fait partie de l'Organisation au même titre que les organes interétatiques de caractère politique et, comme eux, elle contribue à la réalisation des buts des Nations Unies ; mais elle le fait dans une perspective différente : "le Conseil [de Sécurité] a des attributions politiques ; la Cour exerce des fonctions purement judiciaires. Ces deux organes peuvent donc s'acquitter de leurs fonctions distinctes mais complémentaires à propos des mêmes évènements" (C.I.J., arrêt du 26 nov. 1984, Activités militaires et paramilitaires au Nicaragua et contre celui-ci (compétence et recevabilité), Rec. 1984, § 95, p. 435). Ce sont ces évènements que le Tchad signale à l'attention de la Cour ainsi que l'attitude prise par la Libye à leur égard dans divers forums politiques, représentatifs de la communauté des Etats au plan universel ou régional et qui contraste avec ses revendications actuelles devant la Cour. La stratégie verbale de la Libye au sein de ces organes, et ses silences constituent des preuves claires de ses convictions sur les faits en examen.

1.19 Non seulement, il n'existe aucune antinomie entre l'exercice par la Cour de ses fonctions judiciaires et celles de leurs attributions respectives par les organes des Nations Unies et de l'O.U.A. -ce que la Libye a elle-même reconnu à l'occasion de l'examen de sa demande en indication de mesures conservatoires dans l'affaire relative à des Questions d'interprétation et d'application de la Convention de Montréal de 1971 résultant de l'incident aérien de Lockerbie (ord. du 14 avr. 1992, Rec. 1991, § 23, p. 10 et § 24, p.122)-, mais encore, l'attitude des parties devant ces derniers est directement pertinente devant la première. Et s'il ne fait aucun doute que "tout différend porté devant [la Cour] peut présenter des aspects politiques" (C.I.J., arrêt du 20 déc. 1988, Actions armées frontalières et transfrontalières (compétence et recevabilité), Rec. 1988, § 52, p. 91), il est non moins certain, à l'inverse, que les considérations juridiques sont pertinentes tant devant les organes de l'O.U.A. que devant le Conseil de Sécurité ou l'Assemblée générale des Nations Unies qui, en vertu de l'article 1, paragraphe 1, de la Charte sont tenus d'agir "conformément aux principes de la justice et du droit international" lorsqu'ils procèdent à l'ajustement ou au "règlement des différends ou des situations, de caractère international, susceptibles de mener à une rupture de la paix".

1.20 En s'abstenant de présenter quelque argument juridique que ce soit devant ces organes et en adoptant devant eux des positions totalement contradictoires avec celles qu'elle présente à la Cour en ce qui concerne l'objet du différend, la Libye montre le peu de cas qu'elle fait de ces exigences. Elle ne peut, aujourd'hui, demander à la Cour de ne tenir aucun compte de son attitude passée. "La jurisprudence internationale voit avec défaveur les contradictions entre les comportements successifs des parties" (Charles de VISSCHER, Problèmes d'interprétation judiciaire en droit international public, Pédone, Paris 1963, p. 180).

SECTION 2. LA PRODUCTION DE DOCUMENTS DEVANT LA COUR

1.21 La Libye met en cause, dans son Contre-Mémoire, certaines des annexes et productions de la République du Tchad. Ses remarques concernent principalement les documents provenant des archives du Ministère des Affaires étrangères de la République française. Elles appellent les remarques suivantes, que la République du Tchad complètera s'agissant plus particulièrement des travaux préparatoires du Traité du 10 août 1955 (v. *infra*, par. 5.05 et s.).

a) Accès aux archives du Ministère des Affaires étrangères de la République française

1.22 La Libye se plaint de n'avoir obtenu qu'un accès tardif aux archives du Ministère des Affaires étrangères de la République française (CM/T, par. 1.44, note 37). Elle précise ce grief dans la note verbale n° 7.8.75 du 31 janvier 1992 envoyée au Ministère des Affaires étrangères de la République française (Direction d'Afrique du Nord et du Moyen-Orient). Cette note est présentée comme *exhibit* figurant au volume 2 du Contre-Mémoire libyen (CM/L, *exhibit* 2).

1.23 La République du Tchad n'a pas à prendre position sur les relations du Bureau populaire de la Jamahiriya arabe libyenne avec le Ministère des Affaires étrangères de la République française. Elle s'étonne cependant de la date tardive de la requête libyenne. Le Tchad a entrepris dès la fin de l'année 1990 les démarches nécessaires pour avoir accès aux archives du Ministère français des Affaires étrangères et a reçu en mars 1991 l'assurance que les archives relatives à la négociation du Traité franco-libyen de 1955 seraient mises à la disposition du public à la salle de lecture des archives. Cette disposition entraînait ouverture de la possibilité de consulter les archives à toute personne intéressée et notamment aux Conseils de la Libye. C'est à la suite de cette décision du Ministère des Affaires étrangères que la République du Tchad a pu annexer à son Mémoire les documents diplomatiques français relatifs à la frontière entre le Tchad et la Libye.

1.24 Il ne paraît pas douteux que la partie libyenne aurait eu accès à ces documents si elle en avait fait la demande en temps utile, puisqu'aussi bien le Tchad n'en a eu communication qu'à la condition expresse, mise par les autorités françaises, que ces archives seraient acessibles à tous. Elle est mal venue à se plaindre de ne pas avoir pu en prendre connaissance pour rédiger son Contre-Mémoire et d'avoir reçu le 18 mars 1992 une réponse du Ministère français des Affaires étrangères alors qu'elle ne s'est préoccupée d'effectuer ces recherches que le 31 janvier 1992 (CM/L, *exhibit* 2).

b) Authenticité des annexes et productions présentées par la République du Tchad

1.25 La Libye conteste certaines des annexes présentées par la République du Tchad. D'une part elle estime que le Tchad interprète certains documents d'une manière excessivement favorable à ses vues, ce qui est son droit. Mais d'autre part, elle semble mettre en doute l'authenticité même des documents diplomatiques produits en considérant qu'il ne s'agit pas d'éléments de preuves acceptables (CM/L, par. 1.20 ; par. 3.41 et note 44 ; par. 3.46 et note 54). La République du Tchad examinera ultérieurement le problème de la pauvreté des documents diplomatiques relatifs à la dernière phase des négociations précédant le Traité du 10 août 1955 (*cf. infra* par. 5.05. et s.). Elle se borne ici à faire le point sur la question de l'authenticité des documents produits.

1.26 Un certain nombre de documents diplomatiques tirés des archives du Ministère des Affaires étrangères français sont en mauvais état. Il s'agit de "pelures" des télégrammes envoyés ou reçus par le Département. La photocopie de ces documents a encore compliqué la lisibilité de leurs textes. La République du Tchad a donc fait procéder à des copies dactylographiées de ces documents comme l'article 50, paragraphe 1, du Règlement de la Cour l'y autorise, copies certifiées conformes par l'Agent de la République tchadienne. Elle déposera les photocopies de ces documents en même temps que l'ensemble des annexes à sa réplique au Greffe de la Cour dans les délais qui lui sont assignés. Elle joint à la présente réplique les photocopies de ces documents pour l'information des membres de la Cour et de la partie libyenne (v. R/T, annexes 86, 87, 93, 134, 135, 137 et 139).

1.27 Par ailleurs, l'authenticité des pièces annexées au Mémoire tchadien est assurée par la déclaration de l'Agent de la République du Tchad auprès de la Cour internationale de Justice certifiant la conformité aux originaux de l'ensemble des documents. Cette attestation a été établie en application des dispositions des paragraphes 1 et 3 de l'article 50 du Règlement de la Cour. La Libye a, du reste, pour sa part, procédé exactement de la même manière. De plus et s'agissant des archives du Ministère français des Affaires étrangères, chacune des pièces déposées au greffe sous forme de photocopies est individuellement authentifiée par S.E. M. l'Ambassadeur Philippe HUSSON, Directeur des archives et de la documentation du Ministère des Affaires étrangères de la République française (*cf.* R/T, annexes 86 et s.).

SECTION 3. LES "TROIS THESES" TCHADIENNES (LEUR CONCORDANCE, LEUR ARTICULATION ET LEUR AUTONOMIE)

1.28 A la différence de la Libye, le Tchad a présenté, à maintes reprises, les arguments juridiques propres à conforter sa position dans le cadre du différend qui oppose les deux pays au sujet de l'appartenance de la bande d'Aozou (v. par ex. : la lettre du représentant permanent du Tchad auprès de l'ONU au Président du Conseil de Sécurité, en date du 6 février 1978, S/12.553 ; le memorandum tchadien et ses annexes en date du 22 mars 1983, S/15.649 ou le memorandum tchadien adressé en 1987 au Sous-Comité des experts juristes et cartographes de l'OUA - *cf.* M/L, annexe P.81, pp. 312 et s.).

1.29 Sans fournir le moindre commencement de preuve, la Libye affirme que la position prise par le Tchad en ces occasions diffère de celle qu'il défend dans la présente instance (*cf.* CM/L, par. 1.32 et s.). Ce n'est pas exact : il est évident que la forme de son argumentation n'a pas été la même devant les organes politiques des Nations Unies ou de l'OUA et devant la Cour ; leurs fonctions diffèrent (v. *supra*, par. 1.18) et le poids des considérations juridiques n'est pas le même : si elles sont un élément, parmi d'autres, de débat diplomatique, elles sont seules pertinentes lorsqu'une affaire est soumise à la Haute Juridiction, devant laquelle, au surplus, le débat contradictoire est plus étroitement réglementé. Mais, sur le fond, sa position demeure inchangée ; en particulier, et contrairement à ce que prétend la Libye au paragraphe 1.30 de son Contre-Mémoire, la République du Tchad persiste à soutenir

- que la carte "annexée" à la Déclaration de 1899 présente une certaine importance pour le règlement de la présente affaire, surtout eu égard au renvoi qu'y fait l'accord franco-italien de 1902 ;

- que cet accord est toujours "en vigueur" (*cf. infra*, par. 5.47 et s.) ; et

- que le Traité de 1955 (auquel elle n'est pas "partie" au sens du paragraphe 2 de l'article 102 de la Charte) suffit à établir le bien-fondé de ses conclusions.

1.30 Ce dernier point a toujours constitué et constitue toujours ce que la Libye appelle la "première thèse" du Tchad. Et elle ne s'est pas méprise sur l'importance qu'il convient de lui accorder : dans son Mémoire, la partie libyenne reconnaissait que "an analysis of the historical background of the dispute might have begun with ... the 1955 Treaty, and then have reverted to a review of the "actes internationaux" listed in Annex I to the Treaty" (M/L, par. 5.03), ce qui est très exactement le parti retenu par le Tchad dans son propre Mémoire. Et l'on comprend que la partie libyenne ait préféré, pour sa part, choisir une approche différente consistant à tenter de submerger la Cour par l'exposé d'une masse considérable d'évènements de toutes sortes qu'elle affirme être "pertinents" ("a great many relevant events", M/L, par. 5.04) -ce qui est, pour la plupart, fort contestable, au moins dans une perspective juridique- sans essayer de les hiérarchiser, ni de les apprécier en fonction du droit en vigueur.

1.31 Au demeurant, cette "première thèse" est confortée et confirmée par deux autres, fondées, la deuxième, sur les délimitations conventionnelles de l'époque coloniale, et, la troisième, sur l'occupation effective et paisible de la zone revendiquée aujourd'hui par la Libye, par la France dès avant la première guerre mondiale, par le Tchad depuis son indépendance (et jusqu'à l'occupation armée d'une partie de cette zone par les troupes libyennes).

1.32 Selon la Libye, "such an approach necessarily carries with it the implication that Chad does not have sufficient confidence in any one theory to rely entirely upon it", (CM/L, par. 1.35). Cest méconnaître les règles élémentaires du procès judiciaire, qui repose sur l'idée qu'il appartient aux parties de présenter au juge leur point de vue de la manière la plus complète et argumentée possible, à charge pour la Cour de se déterminer "en se fondant sur telles raisons par elle jugées pertinentes et appropriées" (C.I.J., arrêt du 6 avril 1955, affaire Nottebohm, Rec. 1955, p. 16). Abondance de thèses ne nuit pas, dès lors qu'elles ne sont pas incompatibles les unes avec les autres. Or, comme l'a remarqué à juste titre la Libye, les "trois thèses" du Tchad conduisent toutes trois au même résultat (*cf.* CM/L, par. 1.37 et 1.38). Le raisonnement du Tchad est le suivant : par le Traité du 10 août 1955, la France et la Libye ont consacré le tracé de la frontière contestée ; quand bien même elles n'auraient pas conclu ce traité, le tracé n'en serait pas moins identique du fait qu'au moment de l'indépendance tant de la Libye que du Tchad, il résultait d'accords antérieurs auxquels les deux Etats ont succédé ; enfin, si, à leur tour, ces traités devaient être négligés, la bande d'Aozou, n'en serait pas moins tchadienne du fait de l'effectivité de la présence française puis tchadienne.

1.33 Comme l'avait fait remarquer la République du Tchad, chacune de ces démonstrations, qui se complètent mutuellement, se suffit à elle-même si on la considère isolément (M/T, p. 376, par. 2).

1.34 La Libye semble admettre que tel est le cas (CM/L, par. 1.35), mais elle n'en tire pas les conséquences qui s'en déduisent. Ainsi, par exemple, tout le chapitre 1er de la quatrième partie de son Contre-Mémoire, qui prétend rendre compte de la "deuxième thèse" du Tchad, repose sur le présupposé erroné selon lequel, les traités de 1899, 1902 et 1919 sont indissociables de celui de 1955 ; or c'est le contraire qui est vrai : le Traité de 1955 renvoie certes aux accords antérieurs (et, en ce sens, il consacre l'*uti possidetis* de 1951), mais, quand bien même il n'existerait pas, les délimitations antérieures seraient pleinement opposables à la Libye ; c'est en ce sens que les deux raisonnements sont autonomes.

1.35 La Libye commet le même genre d'erreur en présentant la "troisième thèse tchadienne" dans le chapitre 1er de la cinquième partie de son Contre-Mémoire et en voulant faire croire que, puisque le Traité de 1955 ne mentionne pas les effectivités, celles-ci ne peuvent jouer aucun rôle dans la solution du différend soumis à la Cour (*cf.* CM/L, par. 5.05 et 5.09). Ici encore, la partie libyenne déforme considérablement l'argumentation tchadienne qui consiste à montrer que, si même aucun traité n'était applicable en l'espèce *-quod non-*, la bande d'Aozou n'en serait pas moins tchadienne du fait de son occupation par la France, achevée en 1913, et de l'administration française jusqu'à l'indépendance du Tchad. C'est la Libye qui se contredit gravement : il n'est pas possible d'affirmer à la fois que le Traité de 1955 n'a fixé aucune frontière à l'est de Toummo (CM/L, par. 3.130) -en faisant peser des doutes sur sa validité (*cf.* M/L, par. 5.442 ou CM/L, par. 3.26 ou 3.123)- et qu'il a exclu que la frontière puisse résulter de la présence effective de la France puis du Tchad dans la région contestée, ce qui serait la conséquence logique de l'absence de traité en vigueur car, "Dans l'éventualité où l'effectivité ne coexiste avec aucun titre juridique, elle doit inévitablement être prise en considération" (C.I.J, arrêt du 22 décembre 1986, Différend frontalier, Rec. 1986, § 63, p. 587). C'est dans cette "éventualité" -à vrai dire fort improbable- que la "troisième thèse" du Tchad serait autonome.

1.36 Au demeurant, la République du Tchad tient que les trois séries d'argumentations qu'il présente à la Cour sont, en l'espèce, valables et se renforcent en ce sens notamment que tant le Traité de 1955 que les accords antérieurs ou les effectivités établissent la frontière existant au moment de l'accession des parties à l'indépendance ce qui entraîne l'application du principe *uti possidetis juris*. Au surplus, elles se complètent mutuellement ; en particulier, le Traité de 1955 renvoie aux accords antérieurs (sans que le problème -artificiel- de leur validité "en soi" ait, du reste, la moindre iincidence sur la "première thèse") -v. *infra*, par. 5.47 et s.) et les effectivités sont l'un des éléments de la consolidation du titre français après 1899 (v. *infra*, chapitre IV).

1.37 La Libye fait subir d'autres déformations graves à l'argumentation présentée à la Cour par la République du Tchad : la présente réplique en donnera maints exemples. D'autres sont plus ponctuelles. Ainsi, la Libye fait dire au Tchad que "The 1899 Declaration contained provisions concerning boundary delimitation" (CM/L, par. 4.02 - souligné dans le texte) alors que le Mémoire tchadien admet explicitement qu'il s'agissait alors de la limite entre zones d'influence et non d'une frontière (v. not. M/L, p. 61, par. 56 ou pp. 148 et s.) ; la Libye elle-même le reconnaît d'ailleurs expressément sept pages plus loin (CM/L, par. 1.45). La République du Tchad veut croire que les erreurs de ce type sont involontaires. Leur accumulation laisse cependant planer quelques doutes sur ce point.

1.38 De même, elle s'interroge sur l'insistance mise par la Libye à citer complaisamment une phrase de son Mémoire où il est écrit : "Sans doute, cette présence turque est-elle limitée et se traduit-elle seulement par l'envoi de troupes très nombreuses et de quelques fonctionnaires civils" (M/L, p. 179, par. 135). Le contexte ne pouvait laisser aucun doute sur le fait qu'il s'agissait d'une simple erreur dactylographique -dont la République du Tchad prie au demeurant les membres de la Cour et la partie libyenne de bien vouloir l'excuser -et qu'il fallait lire- "troupes très peu nombreuses" ; la Libye n'en essaie pas moins de tirer avantage de cette inadvertance, certes fâcheuse, mais tout à fait évidente, et ceci à deux reprises (par. 4.137 et 5.30). Le procédé est, pour le moins, inélégant.

1.39 La République du Tchad a cru devoir s'étendre quelque peu sur les trois points qui font l'objet de ce chapitre, car ils lui paraissent traduire la conception singulière qu'a la partie libyenne d'un procès

international dans lequel elle semble voir l'occasion de revenir sur l'attitude qu'elle a adoptée dans les autres forums au sein desquels le différend a été évoqué -ou aurait pu et dû l'être-, tout en n'hésitant pas à déformer, au point de la caricature, l'argumentation adverse -et en tentant de discréditer l'autre partie, plus diligente qu'elle dans la recherche des preuves, ou en s'efforçant de faire planer un doute sur l'authenticité des documents produits par celle-ci. Ce sont des procédés qui ne devraient pas avoir de place devant la Cour mondiale.

CHAPITRE II.

L'OPPOSABILITE A L'ITALIE (ET A LA LIBYE) DE LA DELIMITATION DE 1899 - 1919

2.01 La France et la Grande-Bretagne ont procédé en 1899 à la délimitation de leurs zones d'influence respectives dans la région contestée. Le tracé fixé alors pouvant prêter à confusion, elles ont levé toute ambiguïté par la Convention supplémentaire du 8 septembre 1919.

2.02 La Libye tente de faire valoir que ces délimitations ne lui sont pas opposables au prétexte qu'elle est l'héritière des "droits" de l'Empire ottoman, qui a protesté contre la délimitation de 1899 au nom de la théorie de l'hinterland, et de ceux de l'Italie qui, pour sa part, n'a pas accepté le tracé de 1919. Sans revenir sur ce qu'elle a déjà exposé sur ces points dans son Mémoire et dans son Contre-Mémoire et qu'elle maintient intégralement, la République du Tchad montrera ci-après que ni l'une ni l'autre de ces objections ne sont fondées en droit.

2.03 D'une part en effet, la Turquie, contrairement à ce qu'affirme la partie libyenne, n'avait aucun droit opposable à la France et à la Grande-Bretagne au moment où ces deux pays ont conclu la Déclaration additionnelle de Londres du 21 mars 1899 (section 1.). D'autre part, s'il est parfaitement exact que celle-ci était, par rapport à la Porte, *res inter alios acta*, ce raisonnement ne vaut pas en ce qui concerne l'Italie qui, par les accords de 1900 et 1902 confirmés en 1912, avait reconnu que la Déclaration de 1899 préservait l'intégrité territoriale de la Tripolitaine (Section 2).

SECTION 1. LA PORTEE DE LA DECLARATION DE 1899 PAR RAPPORT A LA TURQUIE

2.04 La Libye attache une grande importance à la notion d'hinterland. Selon elle :

i) dès le XIXème siècle, l'Empire ottoman avança des prétentions sur une large portion de l'arrière-pays (hinterland) libyen (CM/L, par. 1.28, 4.11-4.13) ; ces prétentions étaient étayées par une emprise militaire turque, entre 1862 et 1890, dans certains centres de l'hinterland tels que Ghat, Mourzouk et Ghadamès. Bien qu'elle admette que "the exercise of Ottoman sovereignty was incomplete in the region" (CM/L, par. 4.13), la Libye insiste néanmoins sur le fait que "the Ottoman hinterland claim embraced the Libya-Chad borderlands lying south of Tripolitania, which was part of the Ottoman Empire" (*ibidem*) ;

ii) La Turquie protesta contre la conclusion de la Déclaration franco-britannique du 5 août 1890, de même que contre l'adoption de la Déclaration du 21 mars 1899 (M/L, par. 5.09-5.10 ; 5.77-5.79 ; CM/L, par. 4.127-4.130) ; si les protestations turques de 1890 furent rejetées par la France et la Grande-Bretagne (M/L, par. 5.11-5.12), la Grande-Bretagne répondit aux nouvelles protestations de la Porte contre la Déclaration de 1899 que celle-ci n'affectait pas les droits que d'autres Puissances qu'elle-même et la France auraient pu avoir dans l'hinterland tripolitain (CM/L, par. 4.127) ;

iii) de l'avis de la Libye, l'Empire ottoman avait donc des droits et titres souverains sur cet hinterland (M/L, par. 6.02 ; 6.06 ; CM/L, par. 4.127-4.135).

iv) en tant que successeur de l'Empire ottoman, l'Italie hérita des droits et titres souverains turcs sur l'hinterland en question (CM/L, par. 4.135).

2.05 Toute l'argumentation libyenne est donc fondée sur le concept d'hinterland. Mais elle se garde bien de l'analyser. Or une analyse précise de cette notion, telle qu'elle était en usage à la fin du XIXème et au début du XXème siècle (§ 1) montre qu'elle ne peut trouver application en l'espèce ou, plus précisément, qu'elle est sans incidence sur la validité de la Déclaration franco-britannique de 1899 (§ 2).

§ 1. LA NOTION D'HINTERLAND

2.06 La notion d'hinterland a été étudiée d'une manière magistrale par W. SCHOENBORN dans le cours qu'il a donné à l'Académie de droit international de La Haye en 1929. Après avoir noté que par "hinterland" on désigne l'arrière-pays colonial, il continue ainsi :

> "Le but qu'on poursuit ici est le suivant : un ou plusieurs Etats accordent à un autre Etat déterminé le droit de soumettre à l'avenir à son activité et notamment d'occuper en conformité avec le droit international un territoire anétatique (c'est à dire un territoire non encore occupé ou soumis à son autorité par un membre de la communauté du droit des gens, mais habité par des tribus indigènes). L'expression "hinterland" employée pour le territoire en question s'explique par le fait que d'abord et en règle générale, les puissances coloniales s'établirent le long des côtes, puis demandèrent un privilège portant sur l'occupation du territoire, situé en arrière (en allemand : "hinter") du littoral, dans l'intérieur du continent. Tout Etat ayant reconnu à un autre une pareille sphère d'intérêts, a renoncé par là à toute tentative d'influence propre dans la sphère d'intérêts,

> même pour le cas où l'Etat intéressé ne se serait pas encore rendu effectivement maître et administrateur dudit territoire" (W. SCHOENBORN, "La nature juridique du territoire", RCADI, vol. 30, 1929-V, pp. 169-170).

2.07 Il ressort clairement de cette définition que toute prétention de pays coloniaux sur l'hintherland d'un territoire effectivement occupé en Afrique avait un caractère préliminaire et visait à établir les bases d'une colonisation ultérieure de l'arrière-pays de ce territoire. F. DESPAGNET illustra ce concept par une image très efficace :

> "Semblable à un homme qui s'avance dans les ténèbres un flambeau à la main et qui, éclairant une certaine sphère autour de lui, laisse cependant entre la nuit complète et cette sphère une pénombre où sa vue ne pénètre qu'imparfaitement, celui qui entre dans le sombre continent [africain] préoccupé d'y établir la souveraineté de sa patrie entrevoit toujours, plutôt qu'il ne la domine, une zone plus ou moins indécise aux alentours de la région qu'il a réellement occupée" (F. DESPAGNET, "Les occupations de territoires et le procédé de l'hinterland", RGDIP, 1894, p. 107).

2.08 La notion d'hinterland ainsi entendue fut avancée ou reprise avec le même contenu par divers auteurs (v. F. DESPAGNET, *ibid.*, pp. 106-119 ; L. DEHERPE, Essai sur le développement de l'occupation en droit international, Larose, Paris, 1903, pp. 153-195 ; P. FIORE, "Du protectorat colonial et de la sphère d'influence (hinterland)", RGDIP, 1907, pp. 157-159 ; P. FAUCHILLE, Traité de droit international public, A. Rousseau, Paris, 1921, Vol. I, pp. 735-738 (par. 552) ; P. HEILBORN, "Interessensphaere", dans K. STRUPP (éd.), Woerterbuch des Voelkerrechts und der Diplomatie, Berlin-Leipzig, 1924-29, vol. I, pp. 550-552 ; M.F. LINDLEY, The Acquisition and Government of Backward Territory in International Law, Longmans, Grenn and Co., New York-Toronto, 1926, pp. 234-236 ; O. STEINER, "Interessensphaere", *in* H.J. SCHLOCHAUER (ed.), Woerterbuch des Voelkerrechts, vol. II, Walter de Gruyter, Berlin 1961, pp. 32-34).

2.09 Il découle de la notion en question, que de nombreux auteurs assimilent à celle de zone d'influence (v. par ex., F; DESPAGNET, L. DEHERPE, *op. cit.*, ou G.N. UZOIGWE, "Spheres of Influence and the Doctrine of Hinterland in the Partition of Africa", Journal of African Studies, 1976, n° 3, pp. 183-203), que les prétentions d'un Etat colonial sur un territoire africain dont il avait occupé les côtes n'avaient de valeur juridique qu'à certaines conditions. En particulier, il n'en allait ainsi que si d'autres Etats reconnaissaient, par voie d'accords internationaux ou par des déclarations unilatérales sans équivoques, ses prétentions sur l'hinterland. Dans ce cas "l'Etat, à qui une sphère d'intérêts a été accordée, jouit alors, d'après l'opinion juridique dominante, d'un droit d'occupation exclusif à l'intérieur de la sphère d'intérêts" (W. SCHOENBORN, *op. cit.*, p. 171). Autrement dit, la reconnaissance de l'hinterland ne confère à l'Etat occupant le littoral aucun titre souverain sur l'arrière-pays, mais seulement un "droit de préférence" assorti pour les Etats ayant effectué cette reconnaissance d'une obligation de ne pas entraver l'éventuelle occupation effective de l'hinterland par l'Etat qui a avancé des prétentions à ce sujet.

2.10 L'acquisition d'un titre souverain sur l'hinterland était subordonnée aux conditions requises par le droit international général pour toute acquisition de territoire : occupation effective (*possessio corpore*) et intention d'exercer des droits souverains (*animus possidendi*). En d'autres termes, la reconnaissance de prétentions sur l'hinterland avancées par un Etat, comportait simplement et exclusivement l'attribution à cet Etat de ce que SCHOENBORN appelle une "compétence locale potentielle" (*op. cit.*, p. 175), c'est à dire la possibilité de devenir souverain sur le territoire une fois remplies les conditions exigées par le droit international à ce sujet. Par elle-même la notion d'hinterland ne produisait aucun effet juridique :

> "'The modern doctrine of Hinterland" said Lord Salisbury in 1896, "with its inevitable contradictions, indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control". "The theory or practice of the 'hinterland' idea" replied the United States Secretary of State,... (is) "unknown to international law"' (M.F. LINDLEY, *op. cit.*, p. 135 ; v. aussi M. SHAW, Title to Territory in Africa, Clarendon Press, Oxford, 1986, pp. 49-50).

§ 2. L'INCONSISTANCE DES PRETENTIONS TURQUES (ET LIBYENNES) AU REGARD DE LA THEORIE DE L'HINTERLAND

2.11 Appliquées à la notion d'hinterland telle qu'elle était conçue avant la première guerre mondiale, les prétentions libyennes sont doublement inconsistantes : d'une part, la Turquie n'a pas exercé, dans la région aujourd'hui revendiquée par la Libye, une autorité effective et durable, de nature à lui conférer des droits de souveraineté ; d'autre part, les Puissances, et en particulier l'Italie, n'ont jamais reconnu ni de tels droits, ni même une quelconque vocation privilégiée de l'Empire ottoman à occuper cette région.

a) La Turquie n' a pas acquis de droits souverains sur la zone revendiquée par la Libye

2.12 La République du Tchad a déjà abondamment démontré qu'en fait la Turquie n'a pas exercé d'emprise effective, paisible et constante sur le territoire litigieux et que, de ce fait, elle n'a pas été à même d'y acquérir des droits souverains (v. M/T, pp. 179-180, par. 1.31-1.39 et CM/L, par. 5.19-5.80).

2.13 Il convient cependant de noter que l'argumentation du Contre-Mémoire de la Libye a évolué par rapport à celle qu'elle avait fait valoir dans son mémoire. Alors qu'elle y distillait des passages rédigés de façon ambiguë de telle sorte à faire planer le doute sur la date effective de l'arrivée des Turcs dans la région (*cf.* M/L, par. 4.15, 4.76, 4.122, 6.26, etc...), elle se résigne, dans son Contre-Mémoire à une thèse plus conforme à la vérité des faits et, tout en signalant à nouveau qu'"Ottoman garnisons from Tripoli had been established in the western part of this hinterland well before 1890 : at Ghadamès in 1862 ; at Mourzouk in 1865 ; at Ghat in 1875" (CM/L, par. 4.12) - autant de lieux totalement en dehors du cadre du présent différend (en tout cas aux yeux du Tchad !)-, elle reconnaît que "the Ottoman occupation of the region had not yet occurred" au moment de la signature de la Déclaration de 1899 (par. 4.131).

2.14 Dans le même esprit, la partie libyenne, tout en ne pouvant s'empêcher de signaler que "the Ottoman move began in 1906, in region west of the borderlands" (région qui n'est pas contestée devant la Cour), admet que l'occupation turque fut éphémère et a duré au plus quatre ans à Bardaï (1908-1912), deux ans à Aozou et quelques mois, à Oum Chalouba (*cf.* CM/L, par. 4.139 ou 5.32), en admettant que l'occupation de ces deux localités ait véritablement eu lieu, ce qui n'est pas établi.

2.15 La carte LC-M28 (CM/L, p. 174) est censée permettre de visualiser cette "occupation" turque. Elle ne manque pas d'intérêt, surtout si on la compare à celle, sans indication de provenance, reproduite à la page 219 du Mémoire libyen ("map n° 53"), dont elle est visiblement inspirée : elle en reproduit certaines incohérences (par exemple la conquête d'Oum Chalouba y est figurée comme ayant eu lieu en 1912 à partir de Faya prise en 1913...) mais la légende est rectifiée ; il ne s'agit plus de "Turkish-Ottoman Occupation 1906-1913" mais "1908-1913". Au surplus, comme le montre une autre carte libyenne (LC-M41, CM/L, p. 253) certaines places importantes, comme Ounianga, Tekro ou Gouro, restaient en dehors de cette "occupation" passagère.

2.16 Ainsi la Libye reconnaît que la Turquie n'était pas en possession effective de la région litigieuse lors de la signature de la Déclaration additionnelle de Londres du 21 mars 1899. Ceci a des conséquences importantes : en la signant, la France et la Grande-Bretagne ne portaient pas atteinte aux droits territoriaux de la Porte et, quand bien même la Déclaration était *res inter alios acta* par rapport à celle-ci -ce que le Tchad ne conteste nullement- la Turquie n'avait aucun droit particulier à protester contre sa conclusion. Elle pouvait, certes, n'en point tenir compte mais, pour la tenir en échec, il eût fallu qu'elle occupât la région de manière durable et incontestée. Comme la République du Tchad l'a déjà montré (*cf.* les références citées *supra*, par. 2.11), tel ne fut pas le cas.

b) Les Puissances, et en particulier l'Italie, n'ont jamais accepté les prétentions turques sur l'"hinterland" de la Tripolitaine

2.17 Faute d'occupation effective, les droits que la Turquie prétendait avoir sur l'"hinterland" de la Tripolitaine, auraient pu être opposées par elle aux autres puissances intéressées si celles-ci en avaient reconnu l'existence. Toutefois, ni la France, ni la Grande-Bretagne, ni l'Italie ne reconnurent jamais rien de tel.

2.18 Il est inutile de revenir sur l'attitude des deux premiers Etats, que la République du Tchad a déjà longuement exposée (*cf.* M/T, pp. 176-181, par. 122-143 et CM/T, par. 5.31 à 5.36). La Libye ne conteste d'ailleurs pas le rejet des prétentions turques par la France et la

Grande-Bretagne (*cf.* M/L, par. 5.11-5.12) et se borne à souligner la moindre fermeté de cette dernière (*cf.* CM/L, par. 4.127), ce qu'explique, très simplement, son intérêt moindre pour la région (*cf.* CM/T, par. 8.71-8.73). Au demeurant, en tout état de cause, la Grande-Bretagne n'a, pas plus que la France, en aucune circonstance, reconnu un droit quelconque à la Turquie sur la zone revendiquée par la Libye.

2.19 Il en est allé de même de l'Italie. La République du Tchad a déjà montré ce qu'il en était à cet égard (*cf.* CM/T, par. 5.37 à 5.43). Toutefois, face à l'insistance de la partie libyenne, il lui paraît nécessaire de revenir brièvement sur ce point.

2.20 Au cours de la période 1880-1910 l'Italie avait déjà de fortes visées sur la Tripolitaine et la Cyrénaïque et s'apprêtait à s'emparer de ces territoires dans le cadre de sa politique d'expansion coloniale. Le caractère agressif et efficace de l'expansion coloniale française en Algérie, au Niger, et dans la région du lac Tchad l'inquiétait et, parce qu'elle espérait succéder à l'Empire ottoman en Libye, elle avait tout intérêt à bloquer la poussée française et à soutenir les protestations et revendications turques contre l'expansionnisme français. En effet, les autorités italiennes étaient conscientes de ce qu'aussitôt qu'elles se seraient emparées de la Libye, elles seraient aux prises avec la France, puissance bien plus redoutable que l'Empire ottoman. On pouvait donc penser qu'elles s'efforceraient de soutenir les revendications turques sur l'"hinterland" tripolitain et de critiquer, voire même d'entraver autant que possible l'expansionnisme colonial français. Tout au moins auraient-elles cherché à limiter l'extension coloniale de la France au sud de la Tripolitaine.

2.21 En fait, il n'en fut rien. Il ressort de différentes déclarations formelles et notes diplomatiques italiennes, que l'Italie s'inclina devant les faits suivants :

i) les prétentions turques sur l'hinterland tripolitain n'étaient pas étayées par une occupation effective et permanente ;

ii) la France poursuivait efficacement sa poussée dans la zone, qu'elle occupait graduellement ;

iii) ni la France ni la Grande-Bretagne ne prenaient au sérieux les protestations ottomanes.

2.22 La position italienne ressort très clairement de nombreux documents.

2.23 A cet égard il convient de citer tout d'abord un passage de la longue dépêche que l'Ambassadeur italien à Paris envoya le 29 mars 1890 au Ministre italien des Affaires étrangères. Il résumait les points essentiels de l'action diplomatique italienne de la manière suivante :

> "Il faut à cette fin établir à l'avance les points stables sur lesquels notre démarche puisse s'appuyer :
>
> "1° Durant les années 1890-91, l'action diplomatique des quatre puissances (Italie, Autriche-Hongrie, Allemagne et Angleterre) n'a pas soutenu les prétentions territoriales de la Turquie qu'elle a formulées dans la note de contestation présentée à Londres et à Paris contre l'accord anglo-français du 5 août 1890. Cette action prit fin après que l'iradé du Sultan eut énuméré les localités aux extrêmes confins de la Tripolitaine où devaient être tenues des garnisons par des militaires.

"2° Lors de l'échange de notes à Londres, en même temps que l'accord précité de 1890, la France et l'Angleterre ont admis la possibilité qu'il y ait des droits territoriaux de la Turquie au sud du Vilayet de Tripoli, mais elles n'ont pas précisé quels seraient ces droits. En présence des prétentions exagérées de la Porte Ottomane, il ne semble pas que les deux puissances aient négocié avec cette dernière à ce sujet.

"3° L'Italie fut contrainte par la nécessité des choses à devoir distinguer entre ses intérêts liés à la conservation du statu quo de la Tripolitaine proprement dite et ceux qui concernent la préservation de l'hinterland tripolitain. Les premiers intérêts jouissent d'une garantie générale et résultent des traités européens relatifs à l'intégrité de l'Empire ottoman ; les autres n'auraient probablement pas l'appui des autres puissances si l'Italie entendait s'en prévaloir.

"4° En 1897, la France prit l'initiative d'une entente avec l'Italie afin de faire disparaître les défiances réciproques des deux gouvernements au sujet de leurs intentions relatives à la Tripolitaine" (R/T, annexe 1 - souligné par la République du Tchad) (1).

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1 Traduction de la République du Tchad - Texte original :
"Occorre a tale fine prestabilire i punti finali dai quali possiamo muovere il passo :
1° L'azione diplomatica delle quattro potenze : Italia, Austria-Ungheria, Germania ed Inghilterra, svoltasi nel1890-91, non ha sostenuto le pretensioni territoriali della Turchia formolate nella nota protestativa da questa presentata a Londra ed a Parigi contro l'accordo anglo-francese del 5 agosto 1890. Quell'azione ebbe fine dopo che l'iradè del Sultano ebbe enumerate le località dell'estremo confine della Tripolitania, che dai militari ottomane dovevano essere presidiate.
2° Nello scambio di note seguito a Londra, contemporaneo al precitato accordo del 1890, la Francia e l'Inghilterra hanno ammesso la possibilità della esistenza di diritti territoriali della Turchia al sud del Vilayet di Tripoli, ma non hanno precisato quali fossero quei diritti. In presenza delle essagerate pretenzioni della Porta ottomana, non risulta che le due potenze entrassero con questa ultima in trattative al riguardo.
3° L'Italia fu costretta per necessità di cose a dovere distinguere fra gli interessi suoi connessi con la conservazione delle statu quo nelle Tripolitania propriamente tale e quelli che riguardano la preservazione dell'hinterland tripolitano. I primi godono della generale guarentigia resultante dai trattati europei relativi alla integrità dell'impero ottomano di altra guarentizia speciale, gli altri, probabilmente, non averebbero l'appoggio d'altre potenze se l'Italia si accingensse a farli valere.
4° La Francia nel 1897 prese l'iniziativa di un'intesa con l'Italia diretta a fare scomparire le reciproche diffidenze dei due governi circa i loro intendimenti rispetto della Tripolitania."

2.24 La position italienne ne changea pas avec le temps. On peut mentionner à cet égard le discours que le Ministre italien des Affaires étrangères, l'Amiral CANEVARO, prononça le 24 avril 1899 devant le Sénat italien. Les Sénateurs DI CAMPOREALE et VITELLESCHI avaient présenté une interpellation dans laquelle ils demandaient au Ministre si le Gouvernement était au courant d'un accord franco-anglais (la Déclaration de 1899) qui avait pour effet de permettre à la France de s'emparer des territoires environnants la Tripolitaine. Le Ministre répondit qu'il avait été informé de cet accord, et s'étendit ensuite sur la question de l'hinterland tripolitain. A ce sujet, il dit et répéta plusieurs fois que

i) la Turquie n'avait déployé aucune action effective dans la zone pour appuyer, en fait, ses prétentions juridiques ;

ii) la Turquie avait avancé des prétentions excessives et peu réalistes, ce qui avait amené la France, l'Allemagne et la Grande-Bretagne à ne pas attacher de valeur à ces prétentions ;

iii) en revanche, la France étendait graduellement son influence et son emprise effective dans la zone, sans rencontrer d'opposition importante de la part des Turcs ;

face à ces circonstances, il ne restait à l'Italie qu'à chercher à obtenir de la France et de la Grande-Bretagne des assurances au sujet des limites spatiales de l'expansionnisme colonial français.

2.25 Du fait de l'importance de ce discours, il convient d'en citer les passages les plus significatifs :

"[...] Canevaro, Ministre des Affaires Etrangères : [...]

"La Turquie [...] n'a rien voulu faire jusqu'à maintenant pour assurer ses droits sur l'hinterland, manquant aussi à ses obligations, tandis que les protestations, que l'on a tenté de faire quelquefois, n'ont pas été prises en considération par les puissances, celles-là mêmes qui ont établi la théorie de l'hinterland [...].

"Afin de répondre maintenant aux interpellations de nos honorables collègues Di Camporeale et Vitelleschi, il me faut retourner en arrière de quelques années et faire une brève histoire de l'hinterland tripolitain, avant d'en arriver à la Convention anglo -française du 21 mars dont la teneur est désormais connue.

"Après l'occupation de la Tunisie, en 1881, il était évident que la France cherchait à étendre son influence au-delà de la frontière méridionale du Beilicato, s'avançant le long de la frontière occidentale de la Tripolitaine, dans les régions où l'hinterland algérien se confond avec l'hinterland tripolitain.

"En revanche, le Gouvernement ottoman, alors qu'il hésitait à négocier avec la France pour définir chairement les limites de la Tripolitaine, de crainte que la négociation puisse apparaître comme la reconnaissance de la souveraineté française en Tunisie, ne fit rien pour prendre possession de l'hinterland tripolitain de sorte que la France put, sans être dérangée, continuer à étendre largement son influence vers le sud.

"En 1890, et précisément le 5 août, une Convention signée entre l'Angleterre et la France établissait les frontières entre le Soudan français et les régions du Niger, par une ligne qui de Say sur le Niger allait vers l'est jusqu'à Barrua sur le lac Tchad ; c'est pourquoi, rien n'étant précisé vers l'est, l'on devait retenir que l'influence française pouvait arriver jusqu'à une autre ligne qui de l'extrémité sud-ouest de la Tripolitaine rejoint Barrua, et ainsi la Tripolitaine commençait déjà à perdre une de ses voies de commerce avec le centre de l'Afrique.

"La France déclarait, cependant, dans ces circonstances vouloir respecter les "droits de la Turquie dans les régions établies sur la frontière sud de la Tripolitaine", mais au fond cette expression impliquait seulement le respect des droits du Sultan sur la partie méridionale de la Tripolitaine, à savoir le Fezzan, et non sur l'hinterland de la Tripolitaine.

"C'est alors que le Gouvernement italien et d'autres gouvernements se sentirent dans l'obligation de soutenir l'intégrité de l'Empire ottoman et commencèrent à craindre, en effet, que celle-ci, qui n'était pas directement menacée, puisse être tout de même entourée progressivement par les possessions de la France dans l'hinterland, et être, d'une certaine manière, étouffée car privée des autres routes par lesquelles s'alimentait encore le commerce, principale activité du Vilayet.

"Naturellement, l'Italie s'y intéressa plus que les autres ; mais l'accord entre les Puissances, alors qu'il apparaissait efficace pour la protection de la Tripolitaine proprement dite, n'avait pas un tel succès pour l'hinterland, dans lequel les autres Puissances ne reconnaissaient pas un lien effectif avec le statu quo dans la Méditerranée.

"A tout cela s'ajoutait qu'une note de la Sublime Porte de novembre 1890 exagérait tellement l'hinterland auquel le Sultan croyait avoir droit comme souverain de la Tripolitaine qu'elle était de nature à froisser les droits acquis selon la théorie même de l'hinterland par la France, l'Allemagne et l'Angleterre. Celles-ci ne pouvaient pas attacher d'importance aux prétentions turques et réglèrent sans tarder leur situation autour du lac Tchad [...].

"De ce rapide exposé, il apparaît qu'à la fin de 1890, l'Angleterre avait déjà commencé à se désintéresser complètement de l'hinterland tripolitain tandis que la France le voyait ouvert pour elle sans que personne ne s'y oppose.

"Pendant tout ce temps, la Turquie, au lieu de tenter de faire d'une manière ou d'une autre acte de présence dans les oasis principales de l'hinterland tripolitain, se préoccupait uniquement de défendre la façade maritime, le Vilayet, qu'elle estimait menacé par nous et où elle s'armait et se fortifiait, croyant aux visées ambitieuses de l'Italie (Mouvements, conversations) [...].

"En attendant, en Italie, s'enracinait toujours plus la conviction qu'il nous revenait, plus qu'aux autres, de soutenir l'intégrité de la Tripolitaine et la tranquillité de ses commerces avec l'intérieur. Mais dans les faits, les Cabinets qui se succédèrent au pouvoir, bien que se démontrant de vaillants et efficaces défenseurs du Vilayet, pour des raisons tenant à l'intégrité de l'Empire ottoman et au *statu quo* dans la Méditerranée, ne purent s'opposer d'une manière utile à l'influence française qui, peu à peu, envahissait l'hinterland. Ainsi, nos notes diplomatiques exprimèrent, pour l'hinterland tripolitain, un intérêt plus ou moins direct, mais qui ne trouvait pas d'écho auprès des Gouvernements amis. Pendant ce temps, la France, avec énergie et une forte persévérance, continuait de parcourir les routes de l'hinterland avec des expéditions scientifiques, commerciales et militaires, concluant aussi en sa faveur des conventions avec des chefs indigènes de l'hinterland [...]." (R/T, annexe 6 - souligné par la République du Tchad) (2)

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[2] Traduction de la République du Tchad - Texte original :

"Canevaro, ministro degli affari esteri :

"Turchia (...) nulla ha voluto sino ad ora fare per assicurare i suoi diritti sull'hinterland, mancando anche ai suoi obblighi, mentre quelle proteste che qualche volta si è arrischiata di fare sono state tenute per nulle da quasi tutte le potenze, da quelle stesse che hanno stabilito la teoria dell'hinterland (...).

"Nel rispondere ora alle interpellanze dei nostri onorevoli colleghi di Camporeale e Vitelleschi, .mi è necessario tornare addietro di qualche anno e fare breve storia dell'hinterland tripolino, prima di giungere alla Convenzione anglo-francese del 21 marzo, il cui tenore è ormai noto.

"Dopo l'occupazione delle Tunisia, nel 1881, divenne evidente, da parte della Francia, il proposito di estendere la sua influenza oltre il confine meridionale del Beilicato, inoltrandosi, lungo la frontiera occidentale della Tripolitania, nelle regioni dove l'hinterland algerino si confonde con l'hinterland tripolino.

"Il Governo ottomano, invece, mentre era riluttante a negoziare con la Francia per definire chiaramente i limiti della Tripolitania, per tema che il negoziato potesse parere riconoscimento di sovranità francese in Tunisia, nulla faceva per prendere possesso dell'hinterland tripolino, sicchè la Francia potè, indisturbata, continuare ad estendere largamente la sua influenza verso il Sud.

"Nel 1890, e precisamente nel giorno 5 agosto, una Convenzione firmata fra l'Inghilterra e la Francia stabiliva i confini tra il Sudan francese e le regioni del Niger, con una linea che da Say sul Niger andava, per levante, fino a Barrua sul lago Tchad ; cosicchè, nulla essendo precisato verso Est, si doveva ritenere che la influenza francese potesse giungere, da quella parte, sino ad altra linea che dalla estremità Sud-Ovest della Tripolitania venisse fino a Barrua, e così la Tripolitania già incominciava a perdere una delle sue vie di commercio col centro dell'Africa.

"La Francia dichiarava bensì, in quella circostanza, di voler rispettare i "diritti della Turchia nelle regioni stabilite sulla frontiera sud della Tripolitania", ma questa locuzione, in fondo, implicava solo il rispetto dei diritti del Sultano sulla parte meridionale della Tripolitania, cioè sul Fezzan, e non già sull'hinterland tripolino.

"Si fu allora che il Governo italiano ed altri Governi che si ritenevano in obbligo di sostenere l'integrità dell'Impero ottomano, cominciarono ad impensierirsi per le sorti della Tripolitania ! Era a temersi, infatti, che questa, se non direttamente minacciata, potesse essere gradatamente circondata dal procedere della Francia nell'hinterland, ed essere in certo modo soffocata (pur rimanendo sotto il dominio turco), perchè privata delle altre strade per le quali aucora si alimentava quel commercio che è la principale vita del vilayet.

"L'Italia se ne interessò più che le altre, come era naturale ; ma l'accordo fra le Potenze, mentre apparve efficace per la tutela della Tripolitania propriamente detta, non aveva egual fortuna per l'hinterland, nel quale le altre Potenze non ravvisavano una effettiva connessione con la *statu quo* nel Mediterraneo.

"A ciò si aggiungeva che la Sublime Porta, con una sua nota del novembre 1890, aveva delineato con tanta esagerazione l'hinterland su cui il Sultano credeva aver diritto come sovrano della Tripolitania, da offendere diritti già acquisiti, secondo la stessa teoria

2.26 Ainsi, quelque doute que l'on puisse avoir sur la consécration juridique par le droit international en vigueur à l'époque de la notion d'hinterland, il est établi que la Turquie n'en pouvait tirer aucun droit : les Etats auxquels elle a tenté de l'opposer n'ont jamais accepté ses prétentions et elle s'est montrée incapable de les mettre en œuvre par l'occupation effective et durable de la région qu'elle revendiquait.

SECTION 2. L'ACCEPTATION PAR L'ITALIE DES FRONTIERES DE LA TRIPOLITAINE ET DES DELIMITATIONS FRANCO-BRITANNIQUES

2.27 La Libye se considère à l'évidence comme une sorte de "successeur universel". Mais des successions qu'elle revendique -de la Turquie, de l'Italie, pour ne rien dire de celle de la Senoussia sur laquelle il ne paraît pas utile de revenir à ce stade-, elle n'accepte que l'actif : elle se pose en successeur de l'Empire ottoman, mais, comme la République du Tchad l'a

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dell'hinterland, e dalla Francia, e dalla Germania e dall'Inghilterra ; ond'è che queste Potenze non potevano dar valore alle pretese turche. Le tre Potenze non tardavano, anzi, a regolare formalmente la loro situazione intorno al lago Tchad (...).
"Da questa rapida esposizione apparisce che già fin dal 1890 l'Inghilterra aveva accennato a completamente disinteressarsi da quanto concerne l'hinterland tripolino, mentre la Francia lo vedeva, aperto innanzi a sè, senza che alcuno glielo contrastasse.
"In tutto questo frattempo, la Turchia taceva, ed invece di fare in qualche modo atto di presenza nelle oasi principali dell'hinterland tripolino, si preoccupava unicamente di difendere, dalla parte del mare, il vilayet, che temeva minacciato da noi, ed ivi si armava e si fortificava, credendo a mire ambiziose dell'Italia (*Movimenti, conversazioni*) (...)".
"Intanto in Italia sempre più si radicava il convincimento che a noi spettasse, più che ad altri, sostenere l'integrità della Tripolitania e la incolumità dei suoi commerci coll'interno, mentre nel fatto i Gabinetti succedutisi al potere, pur dimostrandosi strenui ed efficaci difensori del Vilayet, per ragioni di integrità dell'Impero ottomano, e per ragioni di *statu quo* nel Mediterraneo, non avevano potuto opporsi con utile effetto alla influenza francese, che a poco a poco ne invadeva l'hinterland. Così, mentre le nostre note diplomatiche esprimevano, per l'hinterland tripolino, un interesse più o meno diretto, che però non trovava eco presso i Governi amici, la Francia, con energia e con perseveranza grandi, continuava a percorrere le vie dell'hinterland con spedizioni scientifiche, commerciali e militari, concludendo anche in suo favore convenzioni con capi indigeni dell'hinterland stesso".

montré dans la section précédente, elle "oublie" que celui-ci ne fit qu'une incursion brève et tardive dans la région et s'y heurta aux protestations de la France qui, elle, s'y implanta effectivement et durablement, et que les prétentions de la Turquie sur l'"hinterland de la Tripolitaine" n'étaient, en tout état de cause, pas opposables, en tant que telles, aux autres puissances en l'absence d'occupation effective.

2.28 Sans craindre la contradiction, la Libye insiste au contraire sur le fait que les délimitations franco-britanniques de 1899 et 1919 étaient par rapport à l'Italie -dont elle se veut également le successeur- *res inter alios acta*. Comme la République du Tchad l'a toujours admis (*cf.* M/T, p. 176, par. 119-120, ou CM/T, par. 8.13), il ne saurait faire aucun doute que, toujours en tant que telles, ces délimitations ne sont pas opposables aux tiers. Ceci n'est, à vrai dire, ni plus ni moins exact qu'en ce qui concerne la revendication turque sur l'"hinterland" de la Tripolitaine, les deux notions d'hinterland et de zone d'influence se recouvrant largement (v. *supra*, par. 2.08) : comme l'hinterland, une zone d'influence n'est opposable aux Etats tiers que si soit ceux-ci l'ont reconnu, soit la région concernée a été effectivement occupée par l'un des protagonistes.

2.29 Or, en ce qui concerne la zone d'influence française, celle-ci a été effectivement et durablement occupée par la France à partir de 1913 (v. *infra*, chapitre IV) et, dès 1900, l'Italie avait reconnu la validité des revendications françaises (§ 1). Cette reconnaissance, renouvelée et renforcée en 1902 et en 1912, interdisait à l'Italie de remettre en cause la délimitation résultant de la Convention franco-britannique de 1919, que le tracé en résultant fût ou non (*quod non*) conforme à celui de 1899 (§ 2).

§ 1. L'OPPOSABILITE A L'ITALIE DES FRONTIERES DE LA TRIPOLITAINE ET DE LA DELIMITATION FRANCO-BRITANNIQUE DE 1899

2.30 La Libye critique l'argumentation tchadienne concernant l'acceptation par l'Italie en 1900, 1902 et 1912, du partage des zones d'influence effectué par la France et la Grande-Bretagne en 1899. Les arguments avancés par la partie libyenne à cet égard sont obscurs et elliptiques. Ils semblent s'articuler autour de deux points essentiels :

i) traité conclu entre la France et la Grande-Bretagne, la Déclaration additionnelle de Londres du 21 mars 1899 était pour l'Italie *res inter alios acta* ; à ce titre, elle ne lui était pas opposable et ne l'est, par voie de conséquence, pas non plus à la Libye en tant qu'Etat successeur (*cf.* CM/L, par. 1.28, 4.16 ou 4.118) ;

ii) au demeurant, en 1900 et 1902, l'Italie n'avait aucun titre juridique ("had no standing") à participer à, ou à reconnaître, un accord concernant la frontière d'un territoire assujetti à la souveraineté ottomane ; dès lors, ici encore, l'accord auquel l'Italie aurait participé ou qu'elle aurait reconnu est, pour l'Empire ottoman, *res inter alios acta*, et ne peut lier ce dernier Etat (*cf.* CM/L, par. 1.28, 4.123 ou 4.124).

2.31 Ces affirmations ne sauraient emporter la conviction. Il ne sert à rien de répéter indéfiniment que la Déclaration franco-britannique était, en tant que telle, *res inter alios acta* à l'égard de l'Italie ; ce point n'est pas en litige entre les parties (v. *supra*, par. 2.27). En revanche, la Libye néglige le fait que les accords de 1900 et 1902 ont rendu opposables à l'Italie les frontières de la Tripolitaine et l'existence des zones d'influence française et britannique déterminées en 1899 et se trompe si elle considère que l'Italie n'avait pas compétence pour reconnaître ces faits au regard du droit alors en vigueur.

a) Les accords de 1900 et 1902 ont rendu opposables à l'Italie les frontières de la Tripolitaine et les zones d'influence française et britannique

2.32 Comme la République du Tchad l'a souligné à maintes reprises, la Déclaration franco-britannique de 1899 n'était pas un accord international pour un partage territorial entre deux Etats ayant des titres souverains sur la région concernée. Il s'agissait simplement d'un accord relatif au partage de sphères d'influence et à l'acquisition, future et éventuelle, de droits souverains sur la zone visée par l'accord. Cela découle d'une manière claire et irréfutable du texte même de l'article 1er de la Déclaration ("Le Gouvernement de la République française s'engage à n'acquérir ni territoire ni influence politique à l'est de la ligne frontière définie dans le paragraphe suivant, et le Gouvernement de sa Majesté britannique s'engage à n'acquérir ni territoire ni influence politique à l'Ouest de cette même ligne" -souligné par la République du Tchad).

2.33 Même à supposer que l'Empire ottoman eût, en vertu de la doctrine de l'hinterland, des droits virtuels sur le territoire en question, aucun principe juridique de droit international n'interdisait, ou empêchait la France et la Grande-Bretagne, d'assumer *inter se* des engagements juridiques concernant leur éventuelle action future sur ce territoire que la Porte ne contrôlait pas (v. *supra*, par. 2.11 et s.). Assurément, ces engagements juridiques ne valaient que pour les parties contractantes et ne liaient aucunement la Turquie.

2.34 En réalité, il advint que celle-ci, ayant eu vent de la Déclaration, protesta. La France et la Grande-Bretagne répondirent en donnant des assurances purement formelles car, étant pleinement conscientes du manque d'emprise effective de l'Empire ottoman sur la zone en question, ces deux puissances (surtout la France) se préparaient à pénétrer dans les territoires visés par la Déclaration et à les occuper.

2.35 Toutefois, la France savait pertinemment que l'Italie avait des visées sur la Libye, qu'elle pouvait chercher à étendre son influence sur la Tunisie et s'opposer à la pénétration française au Maroc. Elle estima donc utile de composer avec l'Italie.

2.36 Après de longues négociations, la France et l'Italie aboutirent à un accord, dans lequel la France, après avoir rappelé la "Convention" franco-anglaise de 1899, précisait, "en raison des relations amicales qui ont été établies entre [elle] et l'Italie", que cette Convention laissait "en dehors du partage d'influence qu'elle sanctionn[ait] le vilayet de Tripoli". En outre, elle s'engageait à ne pas dépasser la limite de la sphère d'influence française établie en 1899, par rapport à la Tripolitaine-Cyrénaïque. La République du Tchad a démontré que cet accord, consacré par l'échange de notes Barrère-Visconti Venosta des 14-16 décembre 1900, constituait un véritable accord international en forme simplifiée (M/T, pp. 168-170, paras. 95-101 ; CM/T, par. 8.23-8.30).

2.37 Par cet accord, la France :

i) donnait son interprétation formelle de la Déclaration de 1899, en précisant que celle-ci laissait le Vilayet de Tripoli en dehors du partage de sphères d'influence ; et

ii) assumait une obligation internationale par rapport à l'Italie : elle n'étendrait pas sa sphère d'influence en direction du nord par rapport à la Cyrénaïque - Tripolitaine et s'engageait formellement à ne pas "dépasser" cette "limite".

2.38 Quant à l'Italie, par la lettre du 16 décembre 1900 (formant partie intégrante de l'accord),

i) en acceptant les assurances françaises, elle prenait acte de la Déclaration de 1899 et du partage de sphères d'influence que celle-ci définissait,

ii) elle s'engageait, en échange, à reconnaître les droits et prétentions françaises concernant le Maroc.

2.39 Au demeurant, dans un discours à la Chambre des Députés le 14 décembre 1901, le Ministre italien des Affaires étrangères, PRINETTI, admit expressément que l'Italie considérait cette interprétation de l'accord de 1899 comme satisfaisante. Après avoir parlé de la "confiance réciproque qui désormais régi[ssait] les rapports" entre la France et l'Italie, il observa :

> "Cette confiance est, de notre part, d'autant plus fondée que déjà depuis quelque temps, le Gouvernement de la République a pris soin de nous informer que la Convention franco-anglaise du 21 mars 1899 marquait pour la France, par rapport à la région contiguë à la frontière orientale de ses possessions africaines et précisément par rapport au Vilayet de Tripoli, (province de l'Empire turc), une limite qu'elle n'avait aucune intention de franchir ; (très bien !), ajoutant qu'elle ne projetait pas d'intercepter les routes caravanières qui mènent de la Tripolitaine au centre de l'Afrique. Les rapports amicaux entre les deux pays sont par la suite devenus tels qu'ils ont rendu

> possible en toute occasion des échanges d'explications entre les deux Gouvernements aussi francs que satisfaisants au sujet de leurs intérêts respectifs en Méditerranée. Ces explications nous ont toujours amenés à constater avec satisfaction une parfaite convergence de vues sur tout ce qui, à ce propos, peut intéresser notre situation réciproque. (Bien !) (M/T, annexe 333 -souligné par la République du Tchad) ([3]).

2.40 Cette importante déclaration trouva un écho dans la déclaration que le Ministre français des Affaires étrangères, DELCASSÉ, fit le 21 janvier 1902 à la Chambre des Députés française. DELCASSÉ nota tout d'abord que

> "l'accord commercial franco-italien du 21 novembre 1898, la convention africaine du 21 mars 1899 qui, en enveloppant définitivement dans notre sphère d'influence les territoires du Borkou, du Tibesti, du Kanem, du Baghirmi, et du Ouadaï, a relié la rive française du Congo à la rive algérienne et tunisienne de la Méditerranée, forme ainsi pour nous, par rapport aux autres pays et régions attenant à la frontière orientale de notre domaine africain, une limite que nous n'avons pas l'intention de dépasser, ont très heureusement modifié le caractère des relations politiques de la France et de l'Italie" ;

il souligna ensuite, lui aussi,

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[3] Traduction de la République du Tchad - Texte original :
"Questa fiducia è da parte nostra tanto più fondata, in quanto che già da qualche tempo il Governo della Repubblica ha avuto cura di significarci che la convenzione franco-inglese dal 21 marzo 1899, segnava, per la Francia, rispetto alla regione attigua alla frontiera orientale dei suoi possedimenti africani, e precisamente rispetto al Vilayet di Tripoli, provincia dell'Impero turco, un limite che essa non aveva alcuna intenzione di varcare (molto bene !) : aggiungendo non essere neppure nei suoi progetti di intercettare le vie carovaniere che dalla Tripolitania conducono al centro dell'Africa. Le relazioni amichevoli fra i due passi sono di poi diventate tali, da rendere in ogni occasione possibili fra i due Governi scambi di spiegazioni altrettanto schietti quanto soddisfacienti circa i rispettivi interessi nel Mediterraneo, e queste spegazioni ci hanno sempre condotto ad accettare con sodisfazione la completa concordanza di vedute sopra quanto, a tal riguardo, poté interessare la reciproca situazione (Bene !)

> "la parfaite concordance de leurs [de l'Italie et de la France] vues sur tout ce qui est de nature à intéresser leurs situations respectives" (M/T, annexe 334).

2.41 Ceci conduisit l'Ambassadeur italien à Paris à envoyer à Rome, le 22 janvier 1902, une dépêche où il mettait en exergue la totale convergence entre les deux pays pour ce qui est des questions africaines (M/T, annexe 77).

2.42 L'autre partie contractante à l'accord de 1899, à savoir la Grande-Bretagne, donna elle aussi à l'Italie des assurances au sujet du contenu et des buts de la Déclaration. A la demande du Gouvernement italien, le 11 mars 1902, l'Ambassadeur anglais à Rome remit aux autorités italiennes une note verbale qui précisait entre autres que

> "[T]he agreement between Great Britain and France of 21st March 1899, laid down a line, to the East and West of which, respectively, the two signatory powers bound themselves not to acquire territory or political influence in the regions traversed by the said line, but [...] the agreement in no way purported to deal with the rights of other Powers, and [...] in particular, as regards the Vilayet of Tripoli and the Mutessariflik of Benghasi all such rights remain entirely unaffected by it" (M/L, vol. 2, annexe 6).

2.43 Le 12 mars 1902 le Ministre italien des Affaires étrangères, PRINETTI, commentant cette note verbale dans une dépêche à l'Ambassadeur italien à Londres, notait que

> "Le Gouvernement Royal est reconnaissant au Gouvernement de Sa Majesté Britannique d'avoir éclairci d'une manière non

> ambiguë, par les déclarations précises contenues dans la note verbale ci-jointe, ses intentions et résolutions au sujet de l'état présent et des éventuelles futures contingences dans cette région" (M/L, vol. 2, annexe 6) (4).

2.44 Il ressort clairement de la note verbale anglaise et des commentaires italiens que :

i) l'Italie prenait acte de l'accord franco-britannique de 1899 ;

ii) la Grande-Bretagne, à l'instar de la France, s'engageait à ne pas avancer de droits ou prétentions dans le Vilayet de Tripoli : ou plutôt, la Grande-Bretagne s'engageait à ne pas s'opposer à l'exercice de droits, par des Etats tiers, dans ce Vilayet. Il est évident qu'à la différence de la France, qui s'engageait à ne pas étendre sa sphère d'influence dans le Vilayet de Tripoli, la Grande-Bretagne s'engageait à respecter les droits d'Etats tiers dans la zone : par là, la Grande-Bretagne visait clairement à laisser ouverte la question de savoir qui, de la Turquie ou de l'Italie, était légitimée à avancer des droits dans le Vilayet, mais, en ce qui concerne ce dernier pays, le résultat était le même : si l'Italie avait des droits, ceux-ci étaient confinés au Vilayet et elle se désintéressait de ce qui pouvait se faire passer hors des limites de celui-ci.

2.45 Ainsi, par les accords de 1900 et 1902 avec la France et la Grande-Bretagne, l'Italie reconnaissait formellement l'existence et la validité de la Déclaration de 1899. En vertu de cette reconnaissance, cet accord devenait opposable à l'Italie : cette reconnaissance ayant constitué la

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[4] Traduction de la République du Tchad - Texte original :
"Il R. Governo è grato al Governo di S.M. Britanica dell'avere con le precise enunciazioni contenute nella unita nota, chiarito in modo non dubbio le sue intenzioni ed i suoi propositi circa lo stato presente e le eventuali future contingenze in quella regione".

prémisse et la base fondamentale, des engagements pris respectivement par la France en 1900 et la Grande-Bretagne en 1902 par rapport à l'Italie, il s'ensuivait que celle-ci n'était plus en droit de prétendre que cet accord était pour elle *res inter alios acta*. Même si formellement elle ne devenait pas partie contractante à l'accord franco-anglais, sa reconnaissance de l'accord comportait une forclusion, pour l'Italie, d'éventuelles contestations futures de l'accord en question.

2.46 En 1902, la Déclaration franco-britannique de 1899 acquit pour l'Italie une valeur juridique supplémentaire en vertu de l'accord BARRERE-PRINETTI du 1er novembre. En effet, par cet accord, qui visait expressément à "préciser les engagements qui résultent des lettres échangées à ce sujet les 14 et 16 décembre 1900", la France précisait que "la limite de l'expansion française en Afrique septentrionale" visée dans l'accord de 1900 était "la frontière de la Tripolitaine indiquée par la carte annexée à la Déclaration du 21 mars 1899".

2.47 En 1902, donc, la France et l'Italie réaffirmaient l'obligation de la première de ne pas étendre sa sphère d'influence en Tripolitaine-Cyrénaïque. De cette manière, l'accord de 1899 revêtait une valeur juridique supplémentaire dans les rapports entre la France et l'Italie : tandis qu'auparavant l'accord fanco-italien de 1900 et la note verbale anglaise de 1902 rendaient la Déclaration de 1899 opposable à l'Italie, dorénavant la France assumait formellement par rapport à l'Italie un engagement identique à celui qu'elle avait pris en 1899 à l'égard de la Grande-Bretagne et l'Italie l'acceptait. Cela ne signifie pas, bien sûr, que celle-ci devint partie contractante à la Déclaration de 1899, qui resta pour elle un accord ne comportant ni droit, ni aucune obligation internationale directe. Toutefois, par le biais de l'accord franco-italien de 1902, l'Italie devint titulaire du droit d'exiger le respect par la France de "la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration du 21 mars 1899".

2.48 Des éléments supplémentaires confirment que la ligne tracée dans la carte de 1899 était devenue contraignante pour l'Italie également.

2.49 En 1910, lorsque le Gouvernement italien eut vent des visées de certains militaires français sur Gadamès, l'Ambassadeur italien, TITTONI demanda des explications à PICHON, qui admit que la France était liée par la ligne de 1899. Voici le texte de la dépêche de TITTONI au Ministre italien des Affaires étrangères :

> "Monsieur le Ministre,
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> "PICHON avec qui j'ai parlé, exclut absolument la possibilité de tentatives d'officiers français sur Gadamès. Il reconnaît parfaitement que l'entente franco-italienne, fixant comme frontière de la Tripolitaine celle tracée sur la carte annexée au précédent accord franco-anglais, exclut une quelconque action de la France sur les oasis de Ghat et de Gadamès lesquelles font partie de la Tripolitaine. PICHON a ajouté que si quelque officier français, contrairement à notre entente, préparait une action vers Ghat et Gadamès, il serait sans aucun doute désavoué et rappelé" (R/T, annexe 18) (5).

2.50 Cet épisode montre clairement que non seulement l'Italie avait reconnu la validité de la Déclaration additionnelle de 1899 et la possibilité juridique pour la France et la Grande-Bretagne de s'établir dans la

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5 Traduction de la République du Tchad - Texte original :
"Signor Ministro, Pichon col quale ho conferito esclude assolutamente la possibilità di tentativi di ufficiali francesi su Gadamès. Egli riconosce perfettamente che l'intesa franco-italiana, fissando come confine della Tripolitania quello segnato nella carta annessa al precedente accordo franco-inglese, esclude qualunque azione della Francia sulle oasi di Ghat e Gadamès le quali fanno parte della Tripolitania. Pichon mi ha soggiunto che se qualche ufficiale francese facesse cosa contraria alla nostra intesa e preparasse un'azione verso Ghat o Gadamès, sarebbe senz'altro sconfessato e richiamato."

zone sur laquelle portait leur accord mais aussi que l'Italie, avant même d'avoir délogé la Turquie de la Tripolitaine n'hésitait pas à se prévaloir de l'échange de lettres de 1902 et de la carte à laquelle il renvoyait pour s'opposer aux visées qu'elle soupçonnait la France d'avoir et à ses tentatives supposées pour s'établir au-delà des limites de la Tripolitaine figurant sur la carte de 1899 et reconnues par les deux parties.

2.51 Il est très significatif à cet égard que l'Italie ait fait cette carte sienne. Ainsi, le Foreign Office britannique annexe à un memorandum en date du 12 octobre 1911 au sujet de la frontière égypto-libyenne, une carte montrant les prétentions italiennes (R/T, annexe 23). Cette carte, qui figure ci-contre n'est autre... que la carte du Livre jaune, à laquelle renvoie l'échange de lettres franco-italien de 1902, surchargée en italien, avec notamment, le long de la limite entre les sphères française et italienne, la mention :

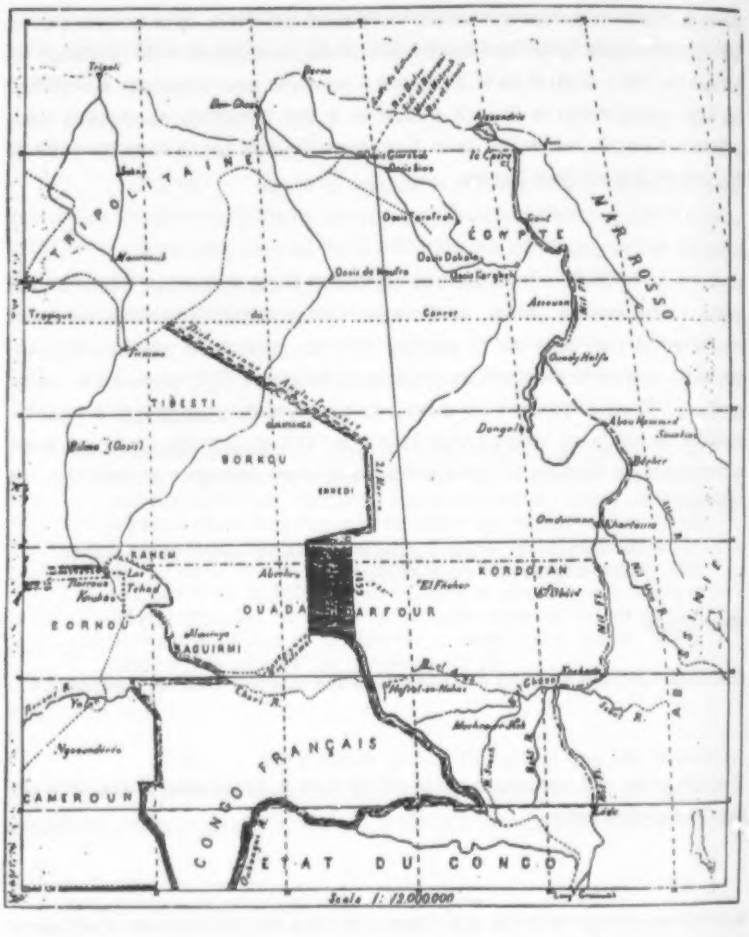
> "Dichiarazione Anglo-francese 21 Marzo 1899" (Déclaration franco-anglaise 21 mars 1899).

Ainsi, l'Italie

i) reproduit la carte de 1899 et l'utilise dans ses rapports avec les Puissances,

ii) et se fonde non seulement sur la frontière de la Tripolitaine telle qu'elle est figurée sur cette carte,

iii) mais aussi sur la limite qui y est retenue entre les sphères d'influence française et britannique.


Tripoli
Ben-Ghazi
Derna
Alexandrie
le Caire
Suez
TRIPOLITAINE
Mourzouk
Oasis Giarabub
Oasis Siwa
Oasis Farafrah
Oasis Dakhla
Oasis Korghe
Oasis de Koufra
ÉGYPTE
MAR ROSSO
Assouan
Nil
Tropique du Cancer
Tummo
TIBESTI
Bilma (Oasis)
BORKOU
ENNEDI
Anglo-français
Ouady Halfa
Dongola
Abou Hammed
Souakim
Berber
Omdourman
Khartoum
KANEM
Lac Tchad
Kouka
BORNOU
Abecher
OUADAÏ
DARFOUR
El Fâcher
KORDOFAN
El Obeïd
BAGUIRMI
1899
Hofrat-en-Nahas
Chari R.
Fachoda
Sobat R.
Mechra-er-Rek
Bahr el Gazal
Nil Bl.
Nil Bl.
ABYSSINIE
Benoué R.
Yola
Ngaoundéré
CONGO FRANÇAIS
CAMEROUN
ÉTAT DU CONGO
Oubangui R.
Lado
Scala 1: 12.000.000

b) L'Italie -et, par suite, la Libye- sont liées par cette reconnaissance

2.52 Il résulte clairement de ce qui précède que l'Italie, sans être devenue partie à la Déclaration franco-britannique de 1899, n'en avait pas moins reconnu que celle-ci, telle qu'elle avait été interprétée par la carte du Livre jaune, lui était opposable. Il reste toutefois à déterminer si l'Italie était en droit d'agir ainsi.

2.53 La Libye le conteste au prétexte que l'Italie "had no standing to recognize any right at all in the area, which were under or derived from Ottoman sovereignty" (CM/L, par. 4.124).

2.54 L'argument, si c'en est un, repose sur une pétition de principe : le territoire concerné était "sous la souveraineté ottomane ou en dérivait". Cette formule étrange témoigne de l'embarras de la partie libyenne et de l'effort qu'elle tente de faire pour contourner le problème ; c'est que si, en 1900-1902, la Turquie est bien présente dans le Vilayet de Tripoli et le contrôle, d'ailleurs imparfaitement mais d'une manière probablement suffisante compte tenu de l'époque et des caractéristiques de la région, en revanche, elle n'est nullement en possession de la zone sur laquelle la France et la Grande-Bretagne entendent étendre leur influence comme la République du Tchad l'a rappelé dans la section précédente et comme du reste la Libye elle-même a fini par l'admettre (v. *supra*, par. 2.13 et s.).

2.55 Par conséquent, ni la France et la Grande-BRetagne en 1899, ni l'Italie en 1900 et 1902, ne disposaient de territoires appartenant à la Turquie : les trois puissances se bornent à constater l'extension de l'occupation effective de celle-ci et à en déduire, conformément aux règles du droit international en la matière, les limites de territoire lui appartenant. Ce faisant, elles respectent les droits de la Turquie et son intégrité territoriale. En revanche, comme elles en ont le droit en vertu des règles en vigueur à l'époque (v. *supra*, par. 2.06 et s.), elles ne reconnaissent aucun droit à l'Empire ottoman sur l'hinterland qu'il revendique.

2.56 Cette attitude contraste avec la reconnaissance par l'Italie des sphères d'influence française et britannique ce qui est tout aussi conforme au droit alors en vigueur : s'il ne fait aucun doute qu'un traité par lequel deux Etats se reconnaissent mutuellement des sphères d'influence est, par rapport aux tiers, *res inter alios acta*, il n'est pas moins établi qu'un tel traité et les sphères d'influence qu'il établit sont opposables aux Etats tiers les reconnaissant. A partir de 1900 et, plus nettement encore, de 1902, l'Italie s'est trouvée dans cette situation : elle était donc liée par sa reconnaissance tant de la frontière de la Tripolitaine figurant sur la carte de 1899 que de la faculté ouverte à la France et à la Grande-Bretagne de s'établir en dehors de ces limites par la Déclaration de Londres de 1899 ; et cela ne portait en rien atteinte aux droits de la Turquie, absente de cette zone au moment de la conclusion des accords franco-britannique, franco-italiens et italo-britannique.

§ 2. L'OPPOSABILITE A L'ITALIE DE LA DELIMITATION FRANCO-BRITANNIQUE DE 1919

2.57 Il n'entre pas dans les intentions de la République du Tchad de revenir à nouveau sur l'identité -à quelques minutes géographiques près- des tracés résultant des délimitations franco-britanniques de 1899 et 1919 sur laquelle elle s'est longuement étendue tant dans son Mémoire (M/T, pp. 185-189, par. 160-177) que dans son Contre-Mémoire (CM/T, par. 8.114-8.121). Il suffit bien plutôt de constater que, quand bien même le tracé de 1919 différerait de celui de 1919 -*quod non*-, il n'en serait pas moins opposable à l'Italie (et, par suite, à la Libye) du fait des engagements pris par ce pays à l'égard de la France et de la Grande-Bretagne en 1900 et 1902 et qu'elle a d'ailleurs renouvelés après s'être rendue maître de la Tripolitaine et de la Cyrénaïque au détriment de la Turquie.

a) Du fait des accords de 1900 et 1902, l'Italie n'était pas juridiquement fondée à protester contre la délimitation franco-britannique de 1919

2.58 Faute de pouvoir sérieusement se poser en successeur de l'Italie -sinon pour ce qui est du territoire inclus dans la frontière de la Tripolitaine indiquée par la carte de 1899-, la Libye revenant à sa thèse initiale, abandonne alors partiellement la "piste italienne" pour prétendre à l'héritage de la Turquie. Vaguement consciente cependant qu'elle ne peut mettre totalement entre parenthèses la colonisation italienne, elle doit admettre -sans toutefois le reconnaître expressément- que c'est l'Italie qui a, dans un premier temps, hérité des prétendus droits ottomans, transmis ensuite à la Libye au moment de son accession à l'indépendance (v. not. CM/L, par. 4.142 et s. et, en particulier, par. 4.147).

2.59 Indépendamment de la similitude des tracés de 1899 et 1919, cette thèse méconnaît au moins deux éléments fondamentaux :

- d'une part, comme la République du Tchad l'a, à nouveau, démontré *supra* (par. 2.12 et s.), la Turquie n'avait aucun droit souverain en dehors des limites de la Tripolitaine ; elle ne pouvait donc transférer à l'Italie des droits qu'elle n'avait pas : *nemo plus juris transferre potest quam ipse habet* (v. par ex. la sentence arbitrale rendue le 4 avril 1928 par Max HUBER dans l'affaire de l'Ile de Palmas, RGDIP 1935, p. 168) ;

- d'autre part, même si l'on admettait, pour les seuls besoins de la discussion, que la Turquie avait des droits territoriaux dans la région concernée par les accords franco-britanniques de 1899 et de 1919, l'Italie n'était plus en mesure, après 1900-1902, d'opposer les droits dont elle aurait "hérités" au titre de la succession d'Etats, à la France et à la Grande-Bretagne.

2.60 Il n'est pas douteux que, par les Traités d'Ouchy et de Lausanne des 15 et 18 octobre 1912 (v. M/L, vol. 2, annexe 10, et M/T, annexe 5), l'Italie succédait à la Turquie dans les relations internationales du territoire qui allait devenir la Libye et que le Pacte de Londres de 1915 et le Traité de Lausanne du 24 juillet 1923 (v. M/L, vol. 2, annexe 20) ont affermi les droits de l'Italie en Libye. Mais aucun de ces accords ne comporte de clause proprement territoriale. Davantage même : par l'article 16 du Traité de 1923,

> "La Turquie déclare renoncer à tous droits et titres, de quelque nature que ce soit, sur ou concernant les territoires situés au-delà des frontières prévues par le présent Traité..."

(v. aussi l'article 22) ; mais, contrairement à ce qu'a laissé entendre la partie libyenne (M/L, par. 5.145 ; v. aussi CM/L, par. 4.147), cette renonciation n'est pas adressée à la seule Italie ; elle l'est aussi à l'Empire britannique et à la France, également parties au traité. Il faut en déduire que les droits improbables de la Turquie sur les territoires occupés par la France sont, en tout état de cause, éteints, exactement au même titre que ceux qu'elle pouvait avoir sur les colonies britanniques ou italiennes -dont, dans ce dernier cas, la Libye.

2.61 Enfin et de toutes manières, il ne faut pas oublier que les traités d'Ouchy et de Lausanne de 1912, conclus entre l'Italie et la

Turquie, étaient, par rapport aux autres Etats *res inter alios acta*. Dès lors, si l'on pouvait les interpréter comme signifiant que la Porte transmettait à l'Italie d'hypothétiques droits sur l'hinterland tripolitain -ce qui, à vrai dire, paraît fort aventureux-, il n'en résulterait strictement aucune obligation à l'égard de la France et de la Grande-Bretagne et ces traités ne délieraient nullement l'Italie des engagements contractés par elle envers ces Etats en 1900 et 1902.

2.62 Or, en ces circonstances, et tout particulièrement par les accords secrets conclus avec la France, l'Italie s'était satisfaite des assurances qui lui avaient données BARRERE, selon lesquelles la frontière de la Tripolitaine indiquée par la carte de 1899 marquaient, "pour la sphère d'influence française (...) une limite que le Gouvernement de la République n'[avait] pas l'intention de dépasser". En conséquence, l'Italie n'était pas juridiquement fondée à se plaindre que la France étendit, le cas échéant, son territoire au détriment de la sphère d'influence britannique, du moment que, ce faisant, elle n'empiétait pas sur le territoire de la Tripolitaine. Or, quelque interprétation que l'on donne de la Convention du 8 septembre 1919, tel n'était assurément pas le cas.

2.63 Les protestations italiennes se trouvaient exclues d'autant plus que sa reconnaissance de la validité de la sphère d'influence française constituait l'une des contreparties (le "*quid pro quo*") de la liberté reconnue en 1902 par la France à l'Italie de développer sa propre sphère d'influence en Tripolitaine-Cyrénaïque.

b) L'Italie a confirmé, après l'éviction de la Turquie, ses engagements de 1900 et 1902

2.64 L'impossibilité juridique dans laquelle se trouvait l'Italie de protester contre l'occupation effective par la France de la zone d'influence que lui reconnaissaient les accords conclus par elle avec l'Italie est d'autant plus fermement établie que, comme la République du Tchad l'a déjà souligné dans son Contre-Mémoire (CM/T, par. 7.18-7.36), en 1912, l'Italie, devenue entretemps titulaire de droits souverains sur la Libye, confirma son acceptation de l'Accord de 1902 -donc aussi sa reconnaissance de la Déclaration de 1899- par l'accord POINCARE-TITTONI du 28 Octobre 1912 (M/T, annexe 6).

2.65 La Libye tente de tirer parti de cet accord en le citant parmi les "examples of recognition by other Powers of Italy's inheritance" et en le présentant de la manière suivante :

> "-British and French Declarations in 1912, recognizing Italian sovereignty, and the absence of any reservations by France and Great Britain as regards the 1912 Treaty of Ouchy" (CM/L, par. 4.147).

2.66 Cette lecture est fort singulière : d'une part, la Déclaration TITTONI-POINCARE ne contient pas la moindre allusion au Traité d'Ouchy ; d'autre part et surtout, la Libye omet de mentionner le fait pourtant fondamental qu'au lendemain du début la colonisation italienne en Libye, la France et l'Italie réaffirment en revanche formellement leur attachement aux accords de 1902.

2.67 Au surplus, l'Italie, dorénavant souverain territorial en Tripolitaine-Cyrénaïque attacha aussitôt une grande valeur juridique à la délimitation de 1899. Ceci fut confirmé en 1914 par le Sous-Secrétaire d'Etat talien aux Colonies, Gaetano MOSCA. Interrogé sur l'occupation par la France d'une oasis en Tripolitaine, il répondit :

> "(...) Or, il faut savoir, et notre éminent collègue le sait certainement, quen 1899, une convention entre la France et l'Angleterre a été conclue, convention qui laissait à la Turquie l'oasis de Ghat, nom qui comprend communément le groupe des trois oasis signalées. Par conséquent, l'oasis de Ghat serait sous la souveraineté italienne à présent et, c'est pour cette raison que l'Italie croit que le groupe entier des oasis lui appartient. Car, en vérité, les deux oasis mineures de Fehout et El-Barkart ne sont qu'un appendice de celle de Ghat.
>
> "La carte géographique, qui fut rédigée après la convention franco-anglaise (6), posait la frontière turque près de Ghat, incorporant cette localité dans le territoire turc. Toutefois, il s'agit d'une carte avec une échelle de un quatre millionième ; or, sur ce genre de carte, il est impossible de déterminer exactement la ligne de frontière.
>
> "C'est pourquoi le Gouvernement français a cru que l'oasis El-Barkat était sous sa souveraineté, mais le Gouvernement italien ne s'est jamais rallié à cette manière de voir.
>
> "La question commença à être négociée dès 1913. En substance, on tomba d'accord pour dire qu'on aurait étudié et délimité la frontière, et entretemps ni la France, ni l'Italie n'auraient occupé l'oasis de El-Barkat, pour laisser la solution de la question complètement ouverte" (R/T, annexe 28 - souligné par la République du Tchad) (7).

On remarque que le Sous-Secrétaire d'Etat italien manifesta ainsi sa parfaite connaissance des circonstances dans lesquelles a été établie la carte de 1899.

Traduction de la République du Tchad - Texte original :
"Ora bisogna sapere, e l'egregio collega certamente lo sa, che nel 1899 fu fatta una convenzione tra la Francia et l'Inghilterra, ed in questa convenzione l'oasi di Ghat, sotto il qual nome si comprende comunemente tutto il gruppo delle tre oasi accennate, veniva lasciata alla Turchia e conseguentemente sarebbe ora sotto la sovranità dell'Italia, e per questa ragione l'Italia crede che tutto l'intiero gruppo di oasi le appartenga. Perchè

2.68 L'importance de cette déclaration fut soulignée par l'Ambassadeur de Grande-Bretagne à Rome, qui en rapporta la teneur au Ministre anglais des Affaires étrangères dans une dépêche du 13 décembre 1914 (B/T, annexe 29).

2.69 Dans un discours à la Chambre des Députés, le 27 septembre 1919, le Ministre italien des Affaires étrangères, TITTONI, confirma à nouveau que l'Italie avait formellement reconnu, en 1900-1902, la Déclaration franco-britannique de 1899.

> "[D]éjà dans l'Accord Prinetti-Barrère du 1er novembre 1902, nous avions reconnu la frontière de la Convention franco-anglaise du 15 (*sic*) juin 1898, qui avait assigné à la France le Tibesti et le Borkou" (M/T, annexe 337).

Même si le Ministre italien mentionna la Convention de 1898, il découle évidemment du fait qu'il ajouta une référence explicite au Borkou et au Tibesti, qu'il visait en effet la Déclaration franco-anglaise de 1899 (dont d'ailleurs le texte précise, au premier alinéa, que "l'art. IV de la Convention du 14 juin 1898

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veramente le due oasi minori del Feuiat et di Baracat non sono che una appendice di quella di Ghat.

"La carta geografica che fu redatta in seguito alla convenzione anglo-francese, poneva il confine turco vicino a Ghat includendo questa località nel territorio turco. Se non che si tratta di una carta, alla scala da uno a quattro milioni, ed in una simile carta è impossibile determinare esattamente la linea del confine.

"Perciò il Governo francese ha creduto che l'oasi di Baracat fosse sottoposta alla sua sovranità ; ma il Governo italiano non si è mai conformato a questo modo di vedere.

"La questione cominciò a trattarsi fino dal 1913. Si restò d'accordo, in sostanza, che si sarebbe studiato e si sarebbe delimitato il confine, ed intanto nè la Francia nè l'Italia avrebbero occupato l'oasi di Baracat, per lasciare la soluzione della quistione completamente impregiudicata."

est complété par les dispositions suivantes qui seront considérées comme en faisant partie intégrante").

2.70 Face aux prétentions exprimées par les Etats sur l'"hinterland" de leurs possessions africaines ou sur les sphères d'influence qu'ils revendiquaient, les exigences du droit international en vigueur à la fin du siècle dernier ou au début de celui-ci étaient identiques : ces prétentions n'étaient opposables aux Etats tiers que si ceux-ci les avaient reconnues ou si l'Etat les faisant valoir occupait effectivement, durablement et paisiblement la région convoitée. Ces conditions ont été remplies pour ce qui est de la sphère d'influence française dans la partie septentrionale de ce qui constitue l'actuelle République du Tchad ; elles ne l'ont pas été en ce qui concerne les convoitises de la Turquie sur l'"hinterland" de la Tripolitaine.

2.71 En effet, la Porte n'a jamais occupé effectivement cette région avant 1908. Et après s'y être aventurée, pour des périodes variables selon les endroits mais toujours inférieures à quatre ans, et sans prendre intégralement le contrôle de la zone aujourd'hui revendiquée par la Libye, elle a dû très rapidement s'en retirer définitivement. Au surplus, les Puissances, y compris l'Italie, pourtant particulièrement intéressée par l'intégrité territoriale de la Tripolitaine qu'elle convoitait, ont toujours contesté le bien-fondé des revendications turques.

2.72 Au contraire, l'Italie a reconnu sans équivoque, en 1900 et 1902, l'existence et la validité des zones d'influence française et britannique résultant de la Déclaration de 1899 en contrepartie de la reconnaissance par la France de sa propre zone d'influence à l'intérieur de la frontière de la Tripolitaine figurant sur "la carte géographique qui fut rédigée à a suite de la Convention franco-anglaise" ("la carta geografica che fu redatta in seguito alla convenzione anglo-francese") de 1899, pour reprendre les propres termes du Sous-Secrétaire d'Etat italien aux Colonies (v. *supra* par. 2.68). De ce fait, l'Italie admettait que cette frontière lui était opposable et ne pouvait se prévaloir d'aucun droit sur la zone couverte par la Déclaration franco-britannique de 1899, dont les deux signataires pouvaient se comporter comme ils l'entendaient à l'intérieur de cette zone, leur comportement étant opposable à l'Italie.

CHAPITRE III.

LA PORTEE DE L'ARTICLE 13 DE L'ACCORD DE LONDRES DE 1915 ET LA SUCCESSION DE LA LIBYE A L'ITALIE

3.01 Développant considérablement une thèse esquissée dans son Mémoire (M/L,par. 5.152-5.155), la Libye tente de montrer, dans son Contre-Mémoire, que l'Accord secret de Londres du 26 avril 1915 donnait à l'Italie le droit de revendiquer des compensations territoriales et la "détermination" en sa faveur des frontières en Afrique sans que l'on sache très bien selon quels critères cette "détermination" devrait être effectuée : ce droit serait passé à la Libye par voie de succession, au moment de son accession à l'indépendance. En conséquence, celle-ci serait aujourd'hui en droit d'invoquer l'article 13 pour exiger que l'on établisse la frontière conformément à ses vues.

3.02 Plus précisément, la thèse libyenne s'articule autour des points suivants :

i) l'article 13 de l'Accord de Londres prévoyait en faveur de l'Italie aussi bien des cessions de territoires que la détermination favorable de frontières contestées (CM/L, par. 6.17-6.19) (Section 1.).

ii) La conclusion de l'Accord Laval-Mussolini en 1935 visait à faire application de l'article 13 de l'Accord de Londres à un double point de vue : en son article 4, il prévoyait une cession de territoire concernant l'Erythrée et la Somalie, tandis qu'en ce qui concerne la frontière méridionale de la Libye, l'article 2 procédait à la détermination de la frontière dans une zone contestée (CM/L, par. 6.20.-6.35) (Section 2.).

iii) comme l'Accord Laval-Mussolini n'entra jamais en vigueur, le droit appartenant à l'Italie d'invoquer l'article 13 de l'Accord de Londres et donc d'exiger la détermination de la frontière méridionale de la Libye serait passé à la Libye, lors de l'accession de ce dernier Etat à l'indépendance, en vertu des règles internationales régissant la succession d'Etats en matière de traités (Section 3.).

3.03 Ces arguments sont dépourvus de tout fondement.

SECTION 1. L'ARTICLE 13 DE L'ACCORD DE LONDRES DE 1915

3.04 Tant le texte que les travaux préparatoires de l'article 13 de l'Accord de Londres du 26 avril 1915 montrent que cette disposition comportait un engagement assez vague de la France et de la Grande-Bretagne à l'égard de l'Italie *pro futuro* sans qu'il en résultât pour celle-ci un droit directement exigible et se bornait à prévoir la possibilité de transferts à l'Italie de territoires africains britanniques ou français.

a) L'article 13 ne contenait qu'un engagement non exécutoire

3.05 Il ressort clairement du texte même de l'article 13 et des travaux préparatoires que cette disposition ne contenait qu'une promesse assez vague, au mieux un *pactum de contrahendo*.

3.06 L'article 13 est rédigé ainsi :

> "Dans le cas où la France et la Grande-Bretagne augmenteraient leurs domaines coloniaux d'Afrique aux dépens de l'Allemagne, ces deux Puissances reconnaissent *en principe* que l'Italie *pourrait réclamer* quelques *compensations équitables*, notamment dans le règlement en sa faveur des questions concernant les frontières des colonies italiennes de l'Erythrée, de la Somalie et de la Libye et des colonies voisines de la France et de la Grande-Bretagne" (souligné par la République du Tchad).

3.07 Les mots soulignés acquièrent toute leur valeur lorsqu'on les compare aux conditions auxquelles l'Italie avait cherché à monnayer son entrée en guerre aux côtés de la France et de la Grande-Bretagne contre l'Allemagne et l'Autriche.

3.08 Les premières propositions italiennes en matière de concessions territoriales en Afrique figurent dans un télégramme du Ministre italien des Affaires étrangères, le Marquis de SAN GIULIANO, daté du 25 septembre 1914. Au point 13, l'Italie se proposait de

> "Demander à l'Angleterre et à la France des concessions en Afrique comme compensation des avantages qu'elles obtiendront avec l'annexion des colonies allemandes" (*R/T*, annexe 56) (8).

3.09 Les demandes italiennes furent précisées dans le télégramme que le Ministre italien des Affaires étrangères, SONNINO, envoya le 16 février 1915 à l'Ambassadeur italien à Londres. L'art. XIII des propositions italiennes était rédigé comme suit :

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[8] Traduction de la République du Tchad - Texte original : "Domandare all'Inghilterra e alla Francia concessioni in Africa in compenso vantaggi che otterranno con l'annessione delle colonie tedesche". Ce texte est reproduit dans M. TOSCANO, *Il Patto di Londra*, N. ZANICHELLI, Bologna 1934, p. 53.

> "Dans le cas où les autres Puissances augmenteraient leurs Colonies Africaines aux dépens de l'Allemagne, on procèdera à un accord spécial pour assurer à l'Italie quelques compensations équitables, en particulier dans le règlement en sa faveur des questions concernant les frontières entre ses colonies de l'Erythrée, de la Somalie et de la Libye et les Colonies contiguës françaises et anglaises" (R/T, annexe 30) (9).

3.10 Cependant, la formule proposée par l'Italie fut rejetée par ses partenaires, et l'Italie fut obligée d'accepter le libellé proposé par les autres Puissances, qui fut repris dans le texte final de l'article 13, dont les parties contractantes convinrent que la version française ferait foi (v. R/T, annexes 33 et 36).

3.11 La comparaison entre les propositions italiennes et le texte final de l'article 13 montre bien que ces propositions furent accueillies dans une forme très édulcorée : l'article 13 finalement adopté ne contient qu'un simple accord de principe, assorti de la mention de ce que l'Italie "pourrait réclamer" des compensations territoriales. L'extrême faiblesse de la disposition en question fut soulignée par le grand historien italien Mario TOSCANO, qui relève que par l'article 13,

> "La question avait été abordée comme s'il suffisait de quelques rectifications des frontières pour la résoudre. De plus, le conditionnel "pourrait" nous laisse très perplexes sur la portée des obligations assumées par l'Entente, et le verbe "réclamer"

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[9] Traduction de la République du Tchad - Texte original :
"Qualora le altre Potenze aumentassero le loro Colonie Africane a spese della Germania, si farà luogo ad un apposito accordo per assicurare all'Italia qualche corrispondente equo compenso, e cio specialmente nel regolamento a suo favore delle questioni di confine tra le sue Colonie dell'Eritrea, della Somalia e della Libia e le colonie attigue francesi e inglesi".

> ne paraît pas pouvoir coexister avec un droit pleinement défini, et affaiblit assurément la valeur de l'engagement" (B/T, annexe 56) (¹⁰).

3.12 Le comportement des autorités françaises fut tout aussi révélateur. En avril 1915, le Gouvernement français proposa que l'on insère dans le Traité une disposition excluant toute compensation territoriale au détriment de la colonie française de Djibouti :

> "Ces compensations toutefois ne seront pas prises sur la colonie française de l'Oboch-Djibouti dont le territoire est trop restreint pour être diminué et la situation trop importante sur la route de l'Indochine et de Madagascar pour permettre une cession quelconque" (B/T, annexe 34).

3.13 Dans sa réponse, le Ministre italien des Affaires étrangères fit valoir que la réticence française était hors de propos : dans la mesure où les compensations éventuelles devaient faire l'objet de négociations ultérieures, qui ne pouvaient aboutir qu'avec l'accord mutuel des parties, la France ne pouvait être forcée d'accepter une cession contre son gré :

> "Je ne vois pas, écrivait-il au sujet de l'article 13, de bonne raison pour l'introduction de la seconde phrase relative à Obok-Djibouti, introduction qui apparaît inexplicable et inutile : inexplicable dans la mesure où le memorandum est présenté par l'Italie tandis que la France émet une réserve ; inutile car les éventuelles compensations devant se faire en temps utile avec

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10 Traduction de la République du Tchad - Texte original :
"La questione era stata impostata come se bastasse qualche rettifica di confini a risolverla. Non solo, ma molto pensosi lascia quel condizionale 'potrebe' sulla portata degli obblighi dell'Intesa, mentre il verbo 'reclamare' non sembra poter facilmente coesistere con un diritto pienamente definito e certo attenua il valore dell'impegno" (M. TOSCANO, Il Patto di Londra, *op. cit.*, p. 161).

> l'accord mutuel des parties, la France pourra toujours demander une exception quelle qu'elle soit" (B/I, annexe 35) (11).

3.14 La France se rangea à cette manière de voir les choses et accepta que toute référence à Djibouti soit exclue du texte final de l'accord (v. B/I, annexe 38). Etant donné les fortes réserves qu'elle avait à ce propos, son attitude conciliante montre clairement qu'elle considérait qu'en soi l'article 13 n'octroyait aucun droit spécifique à l'Italie, et qu'il n'impliquait qu'un engagement à envisager, le moment venu, l'éventualité de cessions de territoires.

b) L'article 13 n'envisageait que des cessions territoriales

3.15 En ce qui concerne le contenu des engagements assumés par les Alliés vis-à-vis de l'Italie, tant le texte de l'article 13 que l'intention des négociateurs, telle qu'elle résulte des travaux préparatoires, montrent bien que les parties contractantes n'entendaient aucunement faire une distinction entre, d'une part les compensations consistant en des cessions territoriales et, d'autre part, celles qui visaient à la détermination favorable de frontières en des zones contestées. Il ressort clairement du texte de la disposition en question qu'elle visait exclusivement des concessions territoriales à l'Italie, en particulier dans des zones situées à la frontière entre les colonies italiennes et celles de la France et de la Grande-Bretagne. Lire l'article 13 comme s'il prévoyait aussi l'établissement de frontières dans des

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[11] Traduction de la République du Tchad - Texte original :
"Art. 13 - Non so vedere una buona ragione per l'introduzione del secondo periodo relativo a Obok-Djibouti, introduzione che apparisce inesplicabile e inutile, inesplicabile in quanto il memorandum comparisce come presentato dall'Italia mentre qui si fa una riserva per parte della Francia ; inutile perché i compensi eventuali dovendo farsi a suo tempo col mutuo consenso la Francia potrà sempre muovere qualunque eccezione voglia".

zones contestées, c'est aller à l'encontre de l'interprétation littérale de la disposition, en attribuant à son texte -tout à fait clair- une ambiguïté dont il est dépourvu.

3.16 Cette disposition prévoit "quelques compensations équitables" en faveur de l'Italie ; ceci implique des transferts territoriaux, notamment dans les zones limitrophes de ses colonies. Rien de plus et rien de moins. "Le devoir de la Cour est nettement tracé. Placée en présence d'un texte dont la clarté ne laisse rien à désirer, elle est tenue de l'appliquer tel qu'il est..." (CPJI, avis consult., 15 sept. 1923, Acquisition de la nationalité polonaise, série B, n° 7, p. 20).

3.17 Au demeurant, l'interprétation littérale est confirmée par les travaux préparatoires, qui montrent bien quelle était l'intention des parties.

3.18 Au cours des négociations, l'Ambassadeur italien à Paris, TITTONI (qui avait été Ministre des Affaires étrang[illegible]s), envoya le 23 mars 1915 un télégramme au Ministre italien des Af[illegible]s étrangères, SONNINO, dans lequel il faisait état des pourparlers avec la [illegible]nce. Passant en revue les différentes clauses du futur accord, il proposait, p[illegible] ce qui était des concessions territoriales en Afrique, que l'Italie deman[illegible] différentes portions de territoire adjacentes aux colonies italiennes, y inclus le Tibesti et le Borkou. Il convient de mentionner la partie pertinente de ce long télégramme :

> "Puis pour l'Afrique, outre les compensations majeures opportunément exigées par V.E. en cas de partage total ou partiel des Colonies allemandes par la Triple Entente, je réitère qu'il serait bon de demander à la France : 1° - que la convention Visconti Venosta pour la Tunisie soit prorogée pour vingt ans ; 2° - que nous soit reconnue l'oasis de Barakat ; 3° -

> qu'on nous donne les deux coins qui, selon les accords Prinetti-Delcassé, pénètrent dans la Tripolitaine par Ghadamès et Ghat et par Ghat et Toummo, nous obligeant pour communiquer avec ces localités à traverser les territoires français. La piste caravanière entre ces localités devrait être dans notre territoire.
>
> "En outre, nous pourrions demander en tout ou en partie le Tibesti et le Borkou qui, en d'autres temps, étaient considérés comme appartenant à la Tripolitaine. Il serait, aussi, prudent de s'assurer le droit à la liaison de la [Libye] par le futur chemin de fer qui de la Tunisie ira à travers le Sahara vers le lac Tchad, nous assurant les habituelles garanties pour l'exercice cumulatif. A l'Angleterre en échange de Djaraboub, que nous voudrions mais qu'elle ne veut donner à aucun prix, nous pourrions demander Kisimayo à l'embouchure du Djouba. Au-delà de Koufra que l'Angleterre nous a déjà reconnu, nous pourrions demander une large zone qui porterait notre possession jusqu'à la ligne qui partage la sphère d'influence anglaise de celle de la France." (B/T, annexe 31) (12).

3.19 Bien que cette proposition ait été jugée trop spécifique et qu'elle n'ait pas été prise en compte lors de la rédaction de l'article 13, elle montre très clairement que les demandes italiennes se limitaient à des transferts de territoire.

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12 Traduction de la République du Tchad - Texte original :
"Per l'Africa poi, oltre i maggiori compensi opportunamente richiesti da V.E. in caso di spartizione totale o parziale delle Colonie tedesche da parte della Triplice Inteso, riterreii che sarebbe bene domandare alla Francia : 1° - che la convenzione Visconti Venosta per Tunisi sia prorogata per venti anni : 2° - che ci sia riconosciuta l'oasi di Barakat ; 3° - che ci siano dati i due cunei che secondo gli accordi Prinetti-Delcassé penetrano nella Tripolitania tra Ghadames e Ghat e tra Ghat e Tummo, obbligandoci per comunicare tra queste località ad attraversare territori francesi. Le carovaniere tra queste località dovrebbero essere in territorio nostro.
"Inoltre potremmo domandare in tutto o in parte il Tibesti ed il Borku che in altri tempi erano considerati come appartenenti alla Tripolitania. Sarebbe altresì prudente assicurarsi il diritto al collegamento della [Libia] colla ferrovia futura che dalla Tunisia andrà attraverso il Sahara verso il lago Tchad, assicurandoci le consuete garanzie per l'esercizio cumulativo. All'Inghilterra in cambio di Giarabub, che noi vorremmo ma che essa non vuole dare a nessun costo, potremmo domandare Kisimayo alla foce del Giuba. Oltre a Kufra che l'Inghilterra ci ha già riconosciuto, potremmo chiedere una larga zona che portasse il nostro possesso fino alla linea che divide la sfera d'influenza inglese dalla francese".

3.20 Cela est confirmé par d'autres éléments importants des négociations. Tel est le cas de la proposition, évoquée plus haut (par. 3.12), faite par le Gouvernement français en avril 1915, et qui tendait à exclure toute compensation relative à Djibouti "dont le territoire est trop restreint... et la situation trop importante... pour permettre une cession quelconque" (R/T, annexe 34 - souligné par la République du Tchad). Cette rédaction montre bien que, comme l'Italie elle-même, la France n'envisageait que l'éventualité de cessions territoriales.

3.21 Du reste, de son côté, l'Ambassadeur d'Italie à Paris, TITTONI, avait déjà proposé, dans un télégramme du 21 avril 1915 à SONNINO, de subordonner l'acceptation du texte français relatif à Oboch-Djibouti à une série de conditions (*cf.* R/T, annexe 36, ce qui confirme qu'il se plaçait lui aussi dans la perspective de cessions territoriales.

3.22 Par la suite, la France renonça à la référence à Oboch-Djibouti : DELCASSÉ indiqua à l'Ambassadeur italien à Paris qu'il n'attachait pas beaucoup d'importance à cette référence, qui fut omise du texte final. Comme la République du Tchad l'a relevé (*supra*, par. 3.14), ce comportement montrait que la France était bien consciente de ce que l'article 13 ne se suffisait pas à lui-même et ne mettait pas à sa charge d'obligations déterminées.

3.23 En toute hypothèse, il ressort clairement des travaux préparatoires de l'article 13 que toutes les parties contractantes envisageaient exclusivement des cessions territoriales de la France et de la Grande-Bretagne à l'Italie.

3.24 Il convient d'ajouter que les négociations entre l'Italie et les Alliés qui eurent lieu à Paris en 1919, et au cours desquelles l'Italie demanda l'application de l'article 13 de l'Accord de Londres, confirment que les parties contractantes interprétaient unanimement la disposition en question de cette manière. Comme l'a rappelé le Mémoire de la République du Tchad (M/T, pp. 198-200), l'Italie demandait entre autres la cession de Djibouti, tandis que la France offrait "une concession nouvelle (...) au sud de la Tripolitaine, vers le Tibesti (R/T, annexe 41). Cette proposition fut refusée par l'Italie, qui en revanche réclama "les territoires sahariens du Tibesti, du Borkou et de l'Ennedi, tous (*sic*) entiers, dans leurs délimitations géographiques et ethniques" (M/T, annexe 92). La Commission coloniale de la Conférence des préliminaires de paix releva également que le différend portait sur l'étendue des cessions territoriales. Dans son rapport, le Conseil Suprême des Alliés rapporte de la manière suivante la position des parties :

> "4- L'Italie n'accepte pas la partie du Tibesti offerte par la France et retire la demande qu'elle avait adressée à cette puissance en vue d'une rectification de la frontière occidentale et méridionale de la Libye, l'Italie entend par là garder la question coloniale africaine ouverte entre elle et la France ; [...]
>
> "7- La France accepte la rectification de la frontière occidentale de la Libye, qui lui avait été primitivement demandée, et elle maintient l'offre qu'elle a présentée à l'Italie en vue de rechercher la base d'une délimitation nouvelle dans la région du Tibesti" (M/T, annexe 89 - souligné par la République du Tchad).

3.25 Parler de "rectification de frontière" ou de "délimitation nouvelle" n'a évidemment de sens que si l'on part du principe qu'une frontière existe bel et bien. Les termes utilisés dans ce Rapport, de même que les positions de la France et de l'Italie rapportées ci-dessus, confirment donc que toutes les parties en cause s'accordaient à considérer que l'article 13 n'envisageait que des cessions territoriales, le cas échéant sous la forme de rectifications des frontières existantes.

SECTION 2. LA CONFIRMATION DE LA PORTEE DE L'ARTICLE 13 DE L'ACCORD DE 1915 PAR L'ACCORD LAVAL-MUSSOLINI DE 1935

3.26 Le Traité LAVAL-MUSSOLINI du 7 janvier 1935 a été conclu, comme le rappelle son préambule, en vue "de régler d'une manière définitive les questions pendantes au sujet (...) de l'Accord de Londres du 26 avril 1915 en son article 13". Il constitue donc un indice important pour déterminer le sens que les parties donnaient à cette disposition.

3.27 La Libye prétend que le Traité de 1935 fait une distinction entre la détermination de la frontière méridionale de la Libye et la rectification de la frontière méridionale de l'Erythrée. Dans le premier cas, l'article 2 du Traité n'aurait pas prévu de cession territoriale, mais une simple délimitation de frontière dans une zone contestée, tandis que dans le second cas, l'article 4 aurait envisagé une rectification de frontière, donc la cession d'une partie d'un territoire colonial français à l'Italie (CM/L, par. 6.19, 6.20 et s., en particulier, par. 6.26-6.27).

3.28 Cette thèse est erronée. Le texte du Traité, son contexte et les cartes auxquelles il se réfère prouvent que, dans le cas de la frontière méridionale de la Libye, le Traité envisageait une cession territoriale, au même titre qu'en ce qui concerne l'Erythrée.

a) Le texte et le contexte de l'article 2

3.29 En ce qui concerne le texte du Traité, il est vrai que tandis que l'article 2, relatif à la Libye, prévoit que la frontière "sera déterminée", l'article 4, qui concerne l'Erythrée, précise que "le tracé suivant sera substitué à la délimitation établie,...". Cependant, il serait erroné de se fonder sur cette différence de terminologie pour affirmer que le Traite opère une distinction entre la détermination d'une frontière préalablement inexistante et la rectification d'une frontière bien établie. En réalité, il est clair que les parties contractantes n'entendaient pas attribuer de conséquences juridiques différentes aux expressions utilisées dans les deux dispositions.

3.30 Cela apparaît clairement à la lecture de l'article 2, lequel, en indiquant le tracé de la frontière dans la zone au nord du Tibesti, précise à deux reprises que ce tracé est établi "de telle sorte que [certaines zones] restent en territoire français" (souligné par la République du Tchad). Ce faisant, le texte du Traité présuppose qu'il existait bel et bien une frontière entre les deux Pays, frontière qui est déplacée par le Traité de manière à transférer à l'Italie une partie des territoires appartenant à la France.

3.31 Comme les traités internationaux doivent être toujours interprétés de manière à rendre leur texte cohérent et non contradictoire, force est de conclure que les articles 2 et 4 du Traité n'opèrent pas la distinction suggérée par la Libye mais envisagent tous deux des cessions de territoire.

3.32 Cette conclusion est confirmée par le contexte de la négociation du Traité, c'est-à-dire l'ensemble des déclarations qui accompagnèrent et suivirent sa conclusion. Il en découle que les Parties contractantes, et notamment l'Italie, considéraient que le Traité visait une cession de territoire aussi bien à l'article 2 (concernant la Libye) qu'à l'article 4 (concernant l'Erythrée). Le texte de ces déclarations a déjà été cité par la République du Tchad, dans ses précédentes écritures (M/L, pp. 208-210 et CM/L, par. 9.55-9.72). Point n'est donc besoin d'y revenir. La seule note discordante provient d'un passage de l'exposé des motifs accompagnant le projet français de loi autorisant la ratification, et dont le Contre-Mémoire libyen fait grand cas (par. 6.28), mais il ne s'agit là que d'un propos isolé, contredit par de nombreuses affirmations officielles, tant françaises qu'italiennes, y compris de LAVAL lui-même, signataire de l'exposé des motifs (*cf.* CM/T, par. 9.59 et 9.60).

b) Les cartes annexées au Traité

3.33 L'examen des deux cartes annexées au Traité et mentionnées respectivement aux articles 2 et 4 conduit à la même conclusion. Toutes deux portent la même mention : "Nuovo confine meridionale secondo l'accordo italo-francese del 7-1-1935-XIII" ("Nouvelle frontière méridionale en vertu du Traité franco-italien du 7 janvier 1935"), à la seule nuance près que la carte n° 2, concernant l'Erythrée, ajoute après les mots "nuovo confine meridionale" : "dell'Eritrea" ("de l'Erythrée") (R/T, annexe 58).

3.34 Il convient de préciser que les cartes en question, annexées à la présente réplique, sont celles publiées dans les actes parlementaires italiens (Sénat et Chambre des Députés), en annexe au texte du Traité. L'original, qui devrait se trouver dans les archives diplomatiques italiennes et françaises, n'a pu être retrouvé. Il n'en reste pas moins qu'elles sont reproduites dans des actes officiels, ce qui prouve au-delà de tout doute, qu'il s'agit bien des cartes mentionnées dans les articles 2 et 4 du Traité.

3.35 Au demeurant et en tout état de cause, le fait que le texte soumis par MUSSOLINI au Parlement italien pour obtenir l'autorisation à la ratification, ait porté les mentions citées ci-dessus, démontre sans la moindre ambiguïté que -en tout cas pour l'Italie- le Traité établissait une "nouvelle frontière" aussi bien en Libye qu'en Erythrée.

3.36 La Libye rejette avec beaucoup de désinvolture l'argument fondé sur les cartes et les mentions qui y sont contenues. A ce propos, le Contre-Mémoire libyen affirme que :

> "To describe a boundary (or for that matter an automobile) as 'new' certainly implies that it is not 'old', but no more than that. If someone points out his or her new car, it does not necessarily mean that, before, that person owned a different car. Even if the person had never before owned an automobile, the car being pointed out to may accurately be described or referred to as a 'new car' " (CM/L, par. 6.21).

3.37 Sans insister sur le caractère oiseux des analogies du Contre-Mémoire libyen , il faut souligner que cette théorie va à l'encontre de la thèse libyenne relative à l'Erythrée. A supposer en effet que l'on admette la version libyenne, on voit mal pourquoi à propos de l'Erythrée, territoire au sujet duquel la Libye admet que le Traité de 1935 envisageait une véritable cession territoriale, on aurait fait mention d'une "nouvelle frontière".

3.38 Dans l'un et l'autre cas, c'est bien d'une "nouvelle frontière" qu'il s'agit ; et cette cession donnait effet aux engagements pris par la France dans l'article 13 du Traité de 1915.

SECTION 3. L'EXTINCTION DES DROITS QUE L'ITALIE POUVAIT TIRER DE L'ACCORD DE LONDRES PAR L'ARTICLE 23 DU TRAITE DE PAIX DE 1947

3.39 Le Traité de 1935 n'étant pas entré en vigueur, la Libye en déduit que la France ne s'était pas acquittée des obligations lui incombant à l'égard de l'Italie en vertu de l'article 13 de l'Accord de Londres de 1915 (CM/L, par. 6.10 et s.), ce qui est probablement exact -sous réserve du caractère vague (v. *supra* par. 3.05 et s.) et non "territorialement situé" (v. M/T, p. 202, par. 2.32) de ces obligations-, et que les droits de l'Italie ont été transmis par voie de succession à la Libye (CM/L, par. 6.39), argument qui, en revanche, est dépourvu de tout fondement. Comme le montrent le texte même et les travaux préparatoires de l'article 23 du Traité de paix du 10 février 1947, l'Italie a renoncé à tous ses droits et titres coloniaux et ceci implique une renonciation au bénéfice des dispositions de l'article 13 de l'Accord de 1915. La doctrine qui s'est penchée sur ce problème confirme cette interprétation.

a) Le texte du Traité

3.40 En vertu de l'article 23 du Traité de paix de 1947,

> "1. L'Italie renonce à tous droits et titres sur les possessions territoriales italiennes en Afrique, c'est-à-dire la Libye, l'Erythrée et la Somalie italienne.
>
> "2. Lesdites possessions demeureront sous leur administration actuelle jusqu'à ce que leur sort définitif soit réglé.

> "3. Le sort définitif de ces possessions sera déterminé d'un commun accord par les Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni, et de l'Union soviétique, dans un délai d'un an à partir de l'entrée en vigueur du présent Traité et selon les termes de la déclaration commune faite par ces Gouvernements le 10 février 1947 et dont le texte est reproduit dans l'annexe XI".

3.41 L'alinéa 1er de cette annexe XI confirme l'intention des quatre puissances de déterminer le sort des colonies italiennes dans le délai d'un an. L'alinéa 2 précisait :

> "Les Quatre Puissances règleront le sort définitif des territoires en question et procèderont aux ajustements appropriés de leurs frontières en tenant compte des aspirations et du bien-être des habitants, ainsi que des exigences de la paix et de la sécurité, et en prenant en considération les vues des autres Gouvernements intéressés".

Et l'alinéa 3 poursuit en disposant qu'en cas de désaccord entre les quatre puissances, la question serait soumise à l'Assemblée générale des Nations Unies.

3.42 Il ressort clairement du texte de l'article 23 et de l'annexe XI que l'Italie renonçait, par la ratification du Traité de Paix, à tous les droits et prétentions concernant ces trois territoires coloniaux, qui pouvaient lui appartenir.

3.43 Plus précisément, par l'article 23

i) l'Italie renonçait formellement à ses droits et prétentions, quels qu'ils fussent, concernant lesdits territoires ;

ii) La souveraineté sur ces territoires était transférée aux quatre puissances, qui acquéraient donc le titre souverain sur ceux-ci et le pouvoir d'en disposer, mais seulement d'un commun accord ;

iii) de même, les quatre puissances acquéraient le droit d'apporter, toujours d'un commun accord, les rectifications de frontières appropriées ;

iv) les droits souverains transférés aux Puissances alliées étaient toutefois soumis à deux limitations :

1° - l'administration effective des territoires n'était pas confiée aux quatre puissances, mais demeurait entre les mains de celles qui, au moment de la conclusion du Traité de paix administraient les anciennes colonies italiennes (on opérait donc une dissociation entre le titulaire formel d'un titre juridique souverain et l'exercice effectif de l'autorité sur un territoire) ;

2° - le titre juridique souverain était soumis à une condition résolutoire ou, plus précisément, à un terme : si dans l'année qui suivait les quatre puissances ne parvenaient pas à un accord, la décision finale appartiendrait à l'Assemblée générale des Nations Unies.

3.44 Il ressort de ce qui précède que l'Italie perdit tous ses droits et titres juridiques sur ses anciennes colonies en 1947, lors de l'entrée en vigueur du Traité de Paix. Ces droits furent transférés aux quatre puissances et, en cas de désaccord entre elles, aux Nations Unies.

3.45 Qu'advint-il, dans ces conditions, des droits à des "compensations territoriales" tirés de l'article 13 de l'Accord de Londres ? Ces droits ne pouvaient pas être transférés aux quatre puissances, car deux d'entre elles étaient les destinataires de ces revendications. A l'évidence, on ne peut pas être titulaire en même temps d'un droit et de l'obligation correspondante ! Force est donc de conclure que les droits en question prirent fin avec le Traité de Paix de 1947.

b) Les travaux préparatoires

3.46 Les travaux préparatoires de l'article 23 confirment cette conclusion.

3.47 Le texte final de l'article 23 dérive de l'article 17 du projet de Traité de paix présenté par les quatre puissances à l'Italie.

3.48 Aussitôt qu'il apprit la teneur de cette disposition, le Gouvernement italien fit valoir qu'une renonciation totale aux droits souverains de l'Italie sur ses colonies était inacceptable, et proposa une disposition en vertu de laquelle ce pays n'abandonnerait pas ses droits dès l'entrée en vigueur du Traité, mais progressivement, tout en continuant à exercer à titre transitoire des pouvoirs d'administration sur ces territoires.

3.49 La première réaction italienne était contenue dans une note du 22 juin 1946, ainsi rédigée :

> "D'après des informations de presse le Gouvernement italien a appris que, dans sa séance du 20 juin, le Conseil des Ministres des Affaires étrangères aurait décidé de soumettre à l'examen d'un Comité d'experts une proposition en vue de reculer d'un an toute solution du problème des territoires italiens d'Afrique.
>
> "Le Gouvernement italien doit faire observer à cet égard que :
>
> "1. Ce renvoi ne saurait, en aucune façon, être interprété, directement ou indirectement, comme une renonciation de la part de l'Italie, à ses droits sur ses territoires d'Afrique.
>
> "Toute clause qui, dans un projet de Traité de paix formulerait un "surrender of rights" inconditionné de la part de l'Italie sur ces territoires, serait inacceptable pour le Gouvernement ainsi que pour le peuple italien.
>
> "2. Le Gouvernement italien fait remarquer que les territoires italiens d'Afrique se trouvent dans la condition juridique de zones de souveraineté italienne internationalement reconnue, militairement occupées par cause de la guerre. Au cas où la décision sur la destinée de ces territoires serait reculée, il serait partant nécessaire de faire participer à l'administration provisoire desdits territoires, et pour la période en question, un nombre adéquat de fonctionnaires italiens, munis de pouvoirs qui suivant le droit de la guerre, sont laissés à l'administration d'un territoire occupé sous le contrôle de la puissance occupante.
>
> "3. Le Gouvernement italien enfin doit exprimer son regret du fait qu'il n'a pas encore été entendu sur la question de ces territoires. Aussi demande-t-il formellement au Conseil des Ministres des Affaires étrangères d'être admis à faire connaître son point de vue à ce sujet" (Texte *in* G. ROSSI, L'Africa italiana verso l'indipendenza (1941-1949), Giuffrè, Milan 1980, p.234 - R/T, Annexe 164).

3.50 L'Italie réitéra ses protestations à trois autres reprises : la thèse italienne fut soumise en des termes vigoureux le 25 juin 1946 par l'Ambassadeur italien TARCHIANI au Secrétaire d'Etat des Etats-Unis p.i. (v. B/T, annexe 61), puis par le Ministre italien NENNI au Secrétaire d'Etat des Etats-Unis, le 31 juillet 1946 (v. B/T annexe 62) et enfin dans un mémorandum du 19 août 1946, dont il convient de citer la partie centrale:

> "The Italian Government fully realizing the spirit governing this post-ponement proposal, has the following remarks to make on the formulation of Article 17 :
>
> "1. The present position, both *de jure* and *de facto*, of Libya, Eritrea and Somalia is still that of territories under Italian sovereignty and as such internationally recognized. These territories are under British military occupation (for the major part) and under French military occupation with regard solely to southern Libya.
>
> "Under such circumstances, Article 17, as it stands adds to the post-ponement clause, two very serious conditions :
>
> "a. Italy must renounce her sovereignty now, before any decision is taken ;
>
> "b. Italy must accept for one more year British military administration (and French for a small part).
>
> "In other words Article 17, as it now reads, imposes on Italy a renouncement to the only ties still binding her both *de jure* and *de facto* to her African territories. It is thus no longer a matter of simple post-ponement as proposed at first, but a formula which implies a decision already taken against Italian interests.
>
> "2. The surrender of sovereignty has no juridical justification. If Italy's sovereignty is cancelled by treaty, through the formula of Article 17 (first part), these territories (Libya, Eritrea and Somalia) become, according to international law, "*res nullius*". Such a juridical situation is contrary to Italy's interests as she would thus see all her rights voided, but it would likewise be extremely prejudicial to the general interests of the international community, and this in a part of the world so politically neuralgic as the Middle East. What would be the advantage of such a voiding of Italian sovereignty if the result is merely to increase the instability of the Middle East ?

> "3. The necessity has been mentioned for Italy to renounce beforehand her sovereignty in order that she may be later given the administration in trusteeship of her African territories. But in this case Italian sovereignty should cease at the very moment when the United Nations approve the trusteeship so that no solution (dissolution ? [sic]) of continuity takes place between Italian sovereignty and the new juridical situation under the United Nations". (Voir le texte intégral dans R/T, annexe 63)

3.51 Il apparaît ainsi que l'Italie était parfaitement consciente de ce que le libellé proposé par les quatre puissances impliquait la perte immédiate et totale de tout droit italien sur les colonies.

3.52 Malgré les protestations italiennes, les quatre puissances ne modifièrent en rien leur texte initial qui devint l'article 23 du Traité de Paix (tous les amendements proposés par certains Etats avaient été retirés : voir The Foreign Relations of the United States, 1946, vol. IV, pp.301-304 ; R/T, annexe 64).

c) Les analyses doctrinales

3.53 Les auteurs qui se sont penchés sur l'article 23 du Traité de Paix de 1947, tous italiens, sont unanimes à considérer que la disposition en question implique la perte immédiate et totale, de la part de l'Italie, de tous ses droits sur ses anciennes colonies.

3.54 La partie libyenne croit cependant pouvoir invoquer en sens contraire l'autorité du Juge Roberto AGO, alors membre de la Commission du droit international des Nations Unies dont elle cite très partiellement l'opinion exprimée lors des débats consacrés à la discussion de divers projets d'articles sur la succession d'Etats en matière de traités (CM/L, par. 6.41-6.42).

3.55 La citation intégrale du compte-rendu de l'intervention du Juge AGO suffit à montrer que celui-ci n'a nullement entendu prendre position sur la question de savoir si les Etats parties au présent litige demeuraient liés par le Traité de Londres de 1915 et par "the obligation under it incurred by France to make "compensations équitables" to Italy" (CM/L, par. 6.42) :

> "M. AGO estime, comme le Président, que la question à l'examen est liée aux définitions. S'il est vrai qu'aux termes de l'article 2, paragraphe 1 b, une succession d'Etats s'entend de la substitution d'un Etat à un autre dans la responsabilité des relations internationales d'un territoire déterminé, cette substitution ne peut s'opérer que sur le territoire même que possédait l'Etat prédécesseur. C'est cette précision, banale en soi, qu'apportent avant tout les articles 29 et 30. Toutefois, ces dispositions ont aussi pour objet d'énoncer une exception à l'article 11, qui consacre l'application du principe de la "table rase" aux Etats nouvellement indépendants.
>
> "Pour illustrer cette exception, M. AGO mentionne le Traité conclu en 1935 entre l'Italie et la France, en vue de régler une question remontant à 1915, année de l'entrée en guerre de l'Italie lors de la première guerre mondiale. A cette époque, il avait été prévu que, en cas de victoire commune conférant à la France et à la Grande-Bretagne des avantages dans leurs territoires coloniaux, des compensations seraient accordées à l'Italie, en particulier sous forme de rectification de frontières. Le Traité de 1935 a eu pour effet de rectifier la frontière entre la Libye, qui était alors une colonie italienne, et les territoires tunisiens et algériens dépendant de la France. Les articles à l'examen ne signifient pas seulement que, lorsque la Libye, l'Algérie et la Tunisie ont accédé à l'indépendance, leurs territoires étaient limités par les frontières ainsi établies, mais signifient aussi que ces Etats n'auraient pas pu se prévaloir de la possibilité de faire table rase de ces traités en application de l'article 11.

> "Il est à noter d'ailleurs que les traités comme l'accord franco-italien prévoient généralement en outre un régime de frontière qui peut présenter une grande importance pour le déplacement des caravanes et des tribus. La Commission ne veut certainement pas permettre que des Etats nouvellement indépendants puissent renier entièrement de telles dispositions, en invoquant l'article 11, et prétendre n'être liés par aucune obligation." (Annuaire de la Commission du Droit International, 1972, vol. I, p.226).

3.56 Si l'on néglige le procédé indélicat et maladroit de la Libye consistant à solliciter la pensée d'un Juge de la Cour, qui n'a pas pris position sur la question en examen, pour s'intéresser à l'opinion des auteurs qui l'ont effectivement abordée, on ne peut qu'être frappé par leur unanimité à considérer que l'article 23 du Traité de 1947 mettait fin à tous les droits de l'Italie liés à ses anciennes possessions coloniales.

3.57 La seule petite divergence que l'on puisse relever dans ces opinions concerne la nature juridique de cette perte de droits. Pour certains auteurs (R. QUADRI, Diritto coloniale, 4ème éd., Padova, 1958, pp. 142-143 ; F. CAPOTORTI, "Sulla efficacia in Italia di sentenze eritree posteriori al Trattato di pace", in Foro Italiano, 1950, Partie I, p. 232 ; C.G. RAGGI, L'amministrazione fiduciaria internazionale, Milan, 1950, pp. 91-92), l'Italie ayant renoncé à ses droits souverains, ceux-ci furent transférés aux Alliés. D'autres considèrent plutôt que l'article 23 impliqua une *derelictio* de la part de l'Italie (G.A. COSTANZO, "L'interpretazione dell'Art.23 del trattato di pace con l'Italia", in Giurisprudenza completa della Corte Suprema di Cassazione, 1952, I, pp. 475-490).

3.58 Pour résumer la position de la doctrine italienne prédominante sur la question cruciale de savoir quels étaient les droits dont l'Italie se dépouillait, il suffit de citer ce qu'écrit le professeur Rolando QUADRI

> ""Renonciation à tout droit et titre" de la part de l'Italie, s'agissant de territoires qui étaient déjà soumis à l'autorité matérielle des Puissances occupantes, signifie purement et simplement qu'on enleva à l'Italie toute légitimation formelle découlant des divers engagements au sujet de l'expansion coloniale italienne qui avaient été assumés, au fur et à mesure, par les différentes Puissances" (*op. cit.*, p. 142 - souligné par la République du Tchad) (13).

3.59 Dès lors, la renonciation totale et définitive, de la part de l'Italie, à tous droits et titres sur ses colonies, et l'acquisition de droits souverains de la part des quatre puissances sur ces territoires, eut comme conséquence que l'Italie "sortait de la scène". Ainsi prirent fin les droits qu'elle pouvait tirer de l'article 13 de l'Accord de Londres.

3.60 Le droit de disposer des anciennes colonies italiennes, de même que le droit d'effectuer l'"appropriate adjustment of their boundaries" (prévu par l'Annexe XI du Traité de paix) passa aux quatre puissances et ensuite, à cause de leur désaccord, aux Nations Unies. Au sein de l'Organisation mondiale, comme le Mémoire et le Contre-Mémoire tchadiens l'ont déjà démontré, la frontière 1899-1919 ne fut pas remise en question (v. aussi *infra*, par. 5.18 et s.).

3.61 Il est dès lors tout à fait erroné d'invoquer un droit de succession de la Libye à l'Italie dans ce domaine.

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[13] traduction de la République du Tchad. Texte original :
""Rinuncia ad ogni diritto e titolo" da parte dell'Italia, trattandosi di territori già nella materiale disposizione delle Potenze occupanti, significa puramente e semplicemente che all'Italia fu tolta ogni legittimazione formale risultante dai veri [*sic*] impegni che a favore dell'espansione coloniale italiana erano stati via via assunti dalle varie Potenze"

3.62 L'insistance mise par la Libye à se réclamer des dispositions de l'article 13 de l'Accord de Londres de 1915 est très étrange :

i) Cette disposition, qui n'a aucun caractère exécutoire et ne vise aucun territoire déterminé, a cessé d'être en vigueur du fait de la renonciation par l'Italie à tous ses droits et titres coloniaux en 1947.

ii) Comme le montrent clairement ses termes mêmes, ses travaux préparatoires et l'interprétation constante qu'en ont donnée les parties concernées, elle comportait un engagement -imprécis- de cession territoriale et, en visant à réaliser une telle cession par le Traité LAVAL-MUSSOLINI de 1935, la France et l'Italie ont témoigné de leur conviction de l'appartenance à la première de la bande d'Aozou, objet de cette cession qui, finalement, n'eut pas lieu.

iii) Il est tout à fait extraordinaire que la Libye qui, dans ses écritures, se fait le chantre de l'anticolonialisme le plus virulent, se réclame d'une disposition qui, en prévoyant le découpage arbitraire, le "charcutage", de l'Afrique, porte la marque du cynisme impérialiste le plus intolérable.

CHAPITRE IV.

LA CONSOLIDATION PROGRESSIVE DU TITRE FRANÇAIS PUIS TCHADIEN

4.01 Alors que la République du Tchad a consacré de longs passages de son Mémoire à l'examen de "la consolidation de la ligne frontière" (*cf.* M/T, chapitre V, pp. 205-292 et, dans une large mesure, chapitre VI, pp. 293-344) et y est revenue dans toute la deuxième partie de son Contre-Mémoire (CM/T, pp. 167-472 ; v. en particulier les chapitres 8 et 9, pp. 299-405), la Libye n'aborde la question que dans la partie VIII de son propre Contre-Mémoire (CM/L, pp. 363-393). A cette fin, elle fait sienne l'analyse, du reste très remarquable, que Charles DE VISSCHER a faite de cette notion (CM/L, par. 8.02).

4.02 Toutefois, la partie libyenne, en prenant trop à la lettre les citations, isolées de leur contexte, d'extraits de l'œuvre de l'éminent internationaliste belge, omet un élément fondamental et oublie que la "consolidation historique" n'opère pas dans le vide ; comme on l'a écrit,

> "[I]t must be emphasized that however important these various consolidating factors [recognition, acquiescence and estoppel] may be, it is still the fact of possession that is the foundation and the *sine qua non* of consolidation. The process cannot, therefore, begin to operate until actual possession is first enjoyed" (R.Y. JENNINGS, The Acquisition of Territory in International Law, Manchester U.P., 1963, p. 26).

4.03 Aussi bien, le Tchad, pour sa part a une conception plus large mais qui fait moins de place à la notion dangereuse d'"intérêts" -dont, dans son Mémoire surtout, la Libye a tellement abusé et contre laquelle d'utiles mises en garde ont été lancées (v. R.Y. JENNINGS, *ibid.*). Il est, très simplement, parti de l'idée qu'

> "Il est tout à fait naturel que l'établissement de la souveraineté soit l'aboutissement d'une lente évolution, d'un développement

> progressif du contôle étatique" (Sentence arbitrale de Max HUBER, 4 avril 1928, affaire de l'Ile de Palmas, R.G.D.I.P. 1935, p. 198).

4.04 Dans ce processus, le titre, quelle que soit son origine, se trouve affermi -dans cette acceptation, "affermissement" et "consolidation" peuvent être tenus pour synonymes- d'une part par le renforcement de l'occupation effective et, d'autre part, par l'attitude des autres Etats intéressés qui, par leur conduite ou la conclusion de traités reconnaissant le titre du souverain territorial, acquiescent à sa souveraineté.

4.05 La Libye ne conteste pas ouvertement ce raisonnement, mais, à trois reprises, elle fait valoir qu'il convient de faire une distinction entre

> "(i) title to the territory, and (ii) the evidence of a precise boundary" (CM/L, par. 8.17 ; v. aussi par. 8.01 et 8.07).

4.06 De l'avis de la République du Tchad, il n'est pas évident que cette distinction ait lieu d'être : dès lors que la sphère d'influence initiale est dotée de limites précises, sa transformation en territoire colonial implique nécessairement que ces limites deviennent des frontières internationales. Néanmoins, pour surplus de droit, et dans le souci de répondre complètement aux objections de la Libye, elle abordera successivement les deux aspects de la question et montrera ci-après que, par le jeu combiné de l'occupation et de l'attitude des différents Etats concernés, non seulement la zone d'influence française s'est transformée en territorie colonial (Section 1), mais encore que les limites de celles-ci sont devenues une véritable frontière internationale (section 2).

SECTION 1. DE LA SPHERE D'INFLUENCE AU TERRITOIRE COLONIAL

4.07 L'idée que la Déclaration franco-britannique de 1899 créait une simple sphère d'influence au profit de la France et que, dès lors, ses limites ne constituaient pas une véritable frontière, revient comme un leitmotiv dans les écritures de la Libye.

4.08 Ce faisant, elle discute à faux. D'emblée, le Tchad a admis qu'un traité établissant une sphère d'influence ne créait pas un titre suffisant à la souveraineté mais constituait un simple "pas" vers celle-ci (*cf.* M/T, p. 61, par. 55), mais que, en revanche,

> "S'il y avait occupation effective, des droits souverains s'ensuivaient..." (M/T, p. 61, par. 56 ; v. aussi p. 148, par. 23 et p. 255, par. 181 ; CM/T, par. 8.15 et 8.22).

4.09 Il est vrai que la partie libyenne objecte à ceci à la fois sur le plan des faits -en prétendant qu'il n'y eut pas d'effectivité (*cf.* CM/L, pp. 246-313)- et en droit -en affirmant que, de toutes manières, d'éventuelles effectivités n'auraient pu avoir pour effet d'opérer la transformation de la zone d'influence française en un territoire colonial doté de frontières véritables.

4.10 Il n'est pas utile de réfuter à nouveau l'objection fondée sur les faits, dont la République du Tchad a fait justice dans son

Mémoire et son Contre-Mémoire. Elle souhaite en revanche revenir brièvement sur les erreurs de droit commises par la Libye et qui portent tant sur le caractère même des zones d'influence (§ 1) que sur les effets de l'occupation française et de l'attitude adoptée par les autres Etats (§ 2).

§ 1. LE CARACTERE TRANSITOIRE DES ZONES D'INFLUENCE

4.11 S'il faut en croire la Libye, ce qu'elle appelle les "Libya-Chad Borderlands" seraient restées une zone de non-souveraineté où les prétentions turques à un hinterland démesuré de la Tripolitaine -prétentions dont elle serait l'héritière-, se heurteraient à la sphère d'influence revendiquée par la France et dont le Tchad se réclamerait, sans que les faits aient tranché entre ces revendications contraires. Par elle-même, cette thèse est fort saugrenue et elle est démentie par la nature même des notions (voisines sinon identiques - v. *supra*, not. par. 2.06 ou par. 2.28) d'hinterland et de sphère d'influence.

4.12 Comme l'a souligné une doctrine apparemment unanime ;

> "Experience has shown that the Powers whose spheres have been delimited by international agreement have not been slow to strengthen their position within their spheres" (M.F. LINDLEY, The Acquisition and Government of Backward Territory in International Law, Longmans, London, 1926, p. 217 ; v. aussi p. 224).
>
> "In the course of time the acquiescence of third states was to be implied, while acts of effective occupation have now come to confirm title by the rules of customary law" (Charles G. FENWICK, International Law, G. Allen and Unwin, London, 1924, p. 229 ; v. aussi Lord CURZON OF KEDLESTON, Frontiers, Clarendon Press, Oxford, 1908, p. 47 ; Thomas H.

HOLDICH, Political Frontiers and Boundary Making, Mc Millan, London, 1916, pp. 95 et s. ; ou G.N. UZOIGWE, "Sphere of Influence and the Doctrine of the Hinterland in the Partition of Africa", Jl of African Studies, 1976, p. 186 ; etc.).

4.13 Partout, les accords créant des sphères d'influence "marked a transitional stage on the road to colonial acquisition" (Malcolm N. SHAW, Title to Territory in Africa, Clarendon Press, Oxford, 1986, pp. 48-49), et la Déclaration franco-britannique du 21 mars 1899 n'a pas fait exception à la règle : l'impérialisme français a pris appui sur elle et sur le désintéressement de son plus dangereux concurrent pour procéder, en moins de quinze ans, à l'occupation effective de l'ensemble de la zone qui lui était reconnue (*cf.* CM/T, pp. 239-268) et y établir ainsi sa souveraineté territoriale.

4.14 Sans doute, ce processus s'est-il heurté à des protestations : de la Turquie d'abord ; de l'Italie ensuite, à partir de 1921. Mais ni l'une ni l'autre de ces puissances ne pouvaient se réclamer d'un titre autre que celui fondé sur la revendication vague (et constamment rejetée par la France) d'un hinterland de la Tripolitaine dont la Libye elle-même reconnaît qu'il s'agissait d'un titre imparfait (v. par ex. CM/L, par. 4.129). A partir de 1913, la France avait transformé son propre titre -au départ lui aussi imparfait- fondé sur la sphère d'influence consacrée par la Déclaration de 1899, en un véritable titre territorial établi sur sa présence effective dans toute la zone.

> "Un titre imparfait ne peut (...) prévaloir sur un titre définitif, fondé sur un exercice continu et pacifique de la souveraineté" (Sentence du 4 avr. 1928, préc., affaire de l'Ile de Palmas, *ibid.*, p. 192).

4.15 La sphère d'influence française était devenue zone de souveraineté. Les protestations italiennes n'y pouvaient plus rien changer.

Quant à la Senoussia, elle s'était repliée vers le Nord, n'exerçait plus d'influence sur la région -sinon, peut-être, religieuse- et luttait... contre les Italiens.

§ 2 LA CONSOLIDATION REALISEE PAR L'OCCUPATION FRANÇAISE ET L'ATTITUDE DES AUTRES ETATS CONCERNES

a) Les conséquences de l'occupation effective française

4.16 La République du Tchad a montré que les "effectivités", d'abord coloniales, puis tchadiennes, pouvaient, en elles-mêmes, constituer un titre valable, opposable à la Libye qui, pas plus que l'Italie, n'a jamais contrôlé la région qu'elle revendique, si ce n'est, en ce qui concerne une partie de la bande d'Aozou, par l'usage de la force contraire aux prescriptions du droit international contemporain, depuis 1973. Telle est la signification de ce que la Libye appelle la "troisième thèse" tchadienne (v. *supra*, par. 1.35). Dans cette perspective, les effectivités ne contribuent pas à la consolidation du titre, elles constituent le titre lui-même, et la présente section n'a pas à s'y intéresser.

4.17 Mais tel n'est pas la seule fonction des effectivités. Comme l'a relevé la Chambre de la Cour appelée à trancher le Différend frontalier entre le Burkina Faso et le Mali, elles peuvent aussi "confirmer l'exercice du droit né d'un [autre] titre juridique" et, à l'inverse,

> "Dans le cas où le fait ne correspond pas au droit, où le territoire objet du différend est administré effectivement par un Etat autre que celui qui possède le titre juridique, il y a lieu de préférer le titulaire du titre" (arrêt du 22 déc. 1986, Rec. 1986, § 63, p. 587).

4.18 En la présente espèce, il n'est pas douteux que les effectivités coloniales françaises ont "confirmé l'existence du droit" né dans le chef de la France du fait des conventions conclues par elle. Consciente qu'elle ne peut, raisonnablement, contester l'occupation effective, durable et paisible de la région qu'elle revendique par la France, la Libye s'est employée à tenter d'établir que cette occupation se heurterait à des obstacles juridiques qui empêcheraient la transformation de son titre imparfait (la sphère d'influence) en une véritable souveraineté territoriale. Il est cependant remarquable que son Contre-Mémoire n'apporte guère d'éléments nouveaux sur ce point. Il suffit donc de rappeler brièvement la position de la République du Tchad à cet égard.

4.19 La partie libyenne a invoqué en premier lieu la jurisprudence de la Cour dans l'affaire du Sahara occidental et fait valoir que, la région étant habitée par des peuples socialement et politiquement organisés et en l'absence d'accords de protectorats, la France ne pouvait prétendre à aucun titre (M/L, par. 6.29-6.31). Le Tchad a réfuté cet argument (CM/T, par. 3.09-3.11) sur lequel la Libye ne revient pas dans son Contre-Mémoire.

4.20 De même, elle n'y apporte aucun élément nouveau en ce qui concerne la prétendue impossibilité où se serait trouvée la France d'acquérir par la force un titre territorial. La République du Tchad a démontré l'inconsistance totale de cet argument, auquel des références peu convaincues à la notion de crime international (CM/L, par. 8.14) n'ajoutent rien, avec les principes du droit intertemporel (*cf.* CM/T, par. 3.23 et s.) et il lui paraît également inutile d'y revenir.

4.21 Dès lors, un seul point quelque peu nouveau du Contre-Mémoire libyen mérite de retenir brièvement l'attention, encore qu'il ne soit nulle part clairement formulé. Cependant, à plusieurs reprises, la Libye laisse entendre que, pour sa part, la Grande-Bretagne, n'avait pas entrepris l'occupation effective de sa propre sphère d'influence et ne considérait, en conséquence, pas la délimitation de 1899-1919 comme portant sur le tracé d'une frontière (*cf.* CM/L, par. 4.97 et s., 4.182 et s. ; 4.230 et s., etc.). La République du Tchad est consciente de ce fait, qu'elle a elle-même souligné dans son Contre-Mémoire (*cf.* CM/T, par. 8.45 ou par. 8.65 et s.), mais rien ne peut en être inféré en ce qui concerne la nature du titre français et de la délimitation en résultant.

4.22 Si, en effet, un Etat A -en l'espèce, la France- est en possession d'un titre souverain sur un territoire dans le cadre de certaines limites au-delà desquelles un Etat B -la Grande-Bretagne- ne revendique, et n'a, qu'un titre imparfait, la ligne qui les sépare n'en présente pas moins le caractère d'une frontière internationale véritable, faute de quoi, le concept même de sphère d'influence eût été vidé de toute substance : il avait précisément pour objectif de permettre au bénéficiaire (non de l'y obliger) d'y établir sa souveraineté territoriale dans le cadre spatial prévu par le traité l'instituant.

4.23 Sans doute, peut-on imaginer des hypothèses dans lesquelles une puissance européenne n'aurait pas occupé l'intégralité de la sphère d'influence qu'elle s'était fait reconnaître soit parce qu'un autre Etat l'aurait supplantée, soit parce qu'elle se serait désintéressée d'une partie de sa sphère et l'aurait abandonnée à d'autres. Telle est d'ailleurs la présentation que fait la Libye de la renonciation au "triangle de Sarra" par la Grande-Bretagne (*cf.* CM/L, par. 4.230 et s.).

4.24 Mais, en la présente occurrence, rien de tel ne s'est produit. La France n'a jamais renoncé à ses droits et les a, au contraire, toujours affirmés avec véhémence. Le Tchad a fait de même après son accession à l'indépendance.

4.25 A l'inverse, la puissance voisine, quelle qu'elle soit n'a jamais empiété, concrètement, sur le territoire tchadien (14) :

- La Turquie s'y est essayée mais n'a pu s'y implanter (v. not. *supra*, par. 2. 12 et s.), et, en tout état de cause elle s'en est retirée avant l'occupation par la France, qui, de son côté, a protesté contre les tentatives d'implantation turques (*cf* CM/T, par. 6.52 à 6.55).

- la Grande Bretagne, conformément aux engagements qu'elle avait pris en 1899, n'a jamais exercé, ni tenté d'exercer, la moindre emprise territoriale dans la bande d'Aozou ni, *a fortiori*, dans d'autres régions tchadiennes ;

- l'Italie, qui a du reste mis fort longtemps à occuper l'ensemble du territoire libyen (v. CM/T, par. 8.62-8.63), n'en a jamais transgressé les frontières sous réserve de quelques velléités de donner effet prématurément au Traité LAVAL-MUSSOLINI et qui furent contrées par la France ;

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[14] A l'exception de la Libye elle-même, après 1973. Mais cette occupation armée, faite au mépris des principes les plus impératifs du droit international contemporain ne saurait produire d'effet juridique (*cf.* M/T, pp. 71-73, par. 89-92 et pp. 381-382, par. 23-27). La Libye ne s'aventure d'ailleurs pas à prétendre le contraire.

- la Libye elle-même ne peut -exception faite de l'invasion armée au début des années 1970- invoquer aucune effectivité dans la zone qu'elle revendique.

4.26 Davantage même : lorsque l'Italie puis la Libye se sont risquées à essayer de tester l'effectivité de la présence française, elles se sont heurtées à une riposte immédiate, pleine d'enseignements en ce qui concerne le problème en examen.

4.27 Il est en effet significatif que la France ait réagi immédiatement, non seulement dans le temps mais aussi, en quelque sorte, "dans l'espace", en ce sens que, malgré le caractère particulièrement inhospitalier de la région, les autorités coloniales françaises ont stoppé les tentatives d'infiltration étrangère au moment même où elles commençaient à se produire et à quelques kilomètres de la frontière. Les incidents de Jef-Jef en 1938 et d'Aozou en 1955 en témoignent de façon éclatante :

- dans le premier cas, les autorités françaises arrêtèrent une équipe d'ouvriers italiens qui avaient entrepris de creuser un puits dans la région de Jef-Jef, à 135 km. du village fixe le plus proche, Tekro (v. la carte annexée au Mémoire tchadien) (*cf.* M/T, pp. 211-218, par. 23-47) ;

- dans le second, les militaires français du poste d'Aozou interceptèrent un convoi libyen, à 10 km. au nord de ce bourg qui est le plus septentrional des villages tchadiens (*cf.* M/T, pp. 132-135, par. 106-114 et pp. 284-289, par. 296-311).

4.28 La présence française n'est donc pas une occupation symbolique. Elle se traduit par des réactions immédiates à toute tentative d'empiètement sur son territoire. Malgré le caractère inhospitalier et largement inhabité de la région, les Français réagissent aussitôt après le franchissement de la frontière -ce qui confirme l'effectivité et l'intensité de leur occupation et les autres Etats concernés ne contestent pas l'effectivité de cette présence. Par elle se trouve réalisée la transformation de leur zone d'influence en territoire colonial. Le titre imparfait est devenu un titre territorial incontestable.

b) Les Etats concernés ont réagi en pleine connaissance de cause

4.29 La Libye soulève cependant une autre question : elle fait valoir que le comportement des Etats intéressés ne présente de pertinence aux fins de la consolidation que si ceux-ci avaient pleinement connaissance de la situation (CM/L, par. 8.17). Sous cette forme vague et générale, la réponse est certainement affirmative. Mais la partie libyenne ne s'en tient pas à cette question simple : elle la module différemment en divers passages de son Contre-Mémoire et selon l'Etat concerné ; sa présentation devient alors beaucoup plus contestable :

4.30 i) En premier lieu, elle précise : "...in particular, knowledge that the conduct would necessarily and adversely affect any contrary claims the State might have" (*ibid.*). Sous cette forme, la question est vaine : un Etat souverain doit agir de façon responsable ; s'il a lui-même des revendications, il lui appartient d'agir en conséquence et de les faire valoir ; tel n'a, assurément, pas été le cas de la Libye (v. *supra*, par. 1.03 et s.) ;

4.31 ii) En deuxième lieu, et appliquant, ici encore, le principe de la "connaissance nécessaire" à son propre cas, la partie libyenne affirme que "the onus is clearly on Chad to prove that Libya, did indeed, have actual knowledge or constructive knowledge or both" (CM/L, par. 8.07) et que "it cannot be the case that a newly-independent State must be regarded as "succeeding" to all knowledge of its predecessor" (CM/L, par. 8.09). Ces "arguments" sont tout à fait extraordinaires :

- en ce qui concerne le premier, on voit mal comment le Tchad pourrait -et pourrait être obligé de- prouver ce que savait ou non la Libye. Au demeurant, en la présente espèce, le problème ne se pose pas : les négociations de 1955 l'ont pleinement informée des positions françaises (encore s'agissait-il d'une confirmation : la Libye ne pouvait, par exemple, ignorer l'incident d'Aozou) et, par la suite, le Tchad, contrairement à elle, a constamment exposé ses arguments au sein des enceintes internationales (*cf. supra*, par. 1.28) ;

- quant à prétendre que la Libye n'a pas "hérité" de l'information dont bénéficiait l'Italie, l'argument est doublement irrecevable : d'une part, si un Etat peut être tenu pour responsable de cet Etat de choses, ce pourrait peut-être être l'ancienne puissance coloniale, mais certainement pas le Tchad ; d'autre part, et surtout, la question n'est pas de savoir si les "informations" ("knowledge") de l'Italie sont passées à la Libye mais si, lorsqu'elle était le souverain territorial, celle-ci a acquiescé au titre français ; si tel est le cas, la Libye, en tant que successeur, est liée non par cet acquiescement lui-même, mais par les effets que celui-ci a produits.

4.32 iii) Enfin, la Libye prétend appliquer le même "test de la connaissance" à la Grande-Bretagne, lorsqu'elle affirme : "...there is no hint of any knowledge of, or acquiescence in, a French claim of title based upon effective occupation" (CM/L, par. 8.60). Cette affirmation est si "fantaisiste", démentie par tant de pièces du dossier, que l'on peut difficilement la prendre au sérieux et il suffit à cet égard de renvoyer, par exemple- un exemple parmi cent autres- à la réponse du Foreign Office du 5 février 1923 à la note de protestation italienne du 18 décembre 1921 contre la Convention franco-britannique de 1919 :

> "His Majesty's Government understand that the French Government have in addition particular reasons for regarding the Italian standpoint as untenable" (M/T, annexe 101).

Cette note, rédigée après une intense concertation diplomatique avec les Français, renvoie expressément à l'argumentation de la France ; et de nombreux éléments du dossier établissent à suffisance que l'occupation effective par cette dernière de la sphère d'influence que lui avait reconnue la Déclaration de 1899 faisait partie de cette argumentation et était bien connue des autorités britanniques qui n'y ont jamais fait objection (v. par ex. R/T, annexes 40, 42 ou 55).

4.33 La consolidation du titre dont le Tchad se prévaut ne tient pas à l'addition de quelques actes isolés, d'où pourrait se déduire un estoppel, mais, bien plutôt, à l'ensemble du dossier : la France est présente, les autres Etats concernés en sont pleinement conscients et se gardent bien de contester sur le terrain cette occupation qui a consolidé son titre initial.

SECTION 2. DE LA LIMITE DES SPHERES D'INFLUENCE A LA FRONTIERE COLONIALE

4.34 Pour autant que la République du Tchad la comprenne, l'argumentation rappelée ci-dessus (par. 4.08) de la partie libyenne consiste à dire que quand bien même la France aurait effectivement occupé la sphère d'influence qui lui reconnaissait la Déclaration de 1899, il n'en résulterait pas que le tracé de la frontière du territoire sur lequel elle exercerait des compétences territoriales souveraines, serait identique à la limite de la sphère d'influence.

4.35 La République du Tchad éprouve quelque difficulté à comprendre la logique de ce raisonnement : la France est là ; elle fait respecter les limites de ce qui est devenu son territoire ; les Etats tiers les respectent ; on voit mal, dans ces conditions, où serait située la frontière, sinon sur cette ligne qui, de l'avis commun constitue la limite d'exercice des compétences territoriales françaises.

4.36 Certes la France n'a pas déployé de fils barbelés tout au long de cette frontière ni installé de postes de douane à chaque point de passage potentiel. Mais la région ne s'y prête pas : elle est pratiquement inhabitée et l'absence d'eau eût rendu un tel dispositif à la fois impraticable et inutile. En revanche, il est frappant de constater que chaque fois qu'une autre puissance s'aventure à transgresser la frontière, les autorités françaises interceptent les fauteurs de trouble aussitôt après le franchissement de celle-ci et les reconduisent à la frontière (v. *supra*, par. 4.26-4.27). Ce simple fait confirme la coïncidence des frontières de la colonie du Tchad avec les limites de l'ancienne sphère d'influence française.

4.37 Si l'on met à part la Turquie qui, par les articles 16 et 22 du Traité de Lausanne conclu notamment avec la France, a renoncé "à tous droits et titres" sur les territoires qui avaient cessé de lui appartenir (v. *supra*, par. 2.60), tous les Etats intéressés concourent d'ailleurs, positivement, à l'affermissement du titre frontalier de la France.

.4.38 Tel est le cas d'abord de la Grande-Bretagne qui, par le biais de la Déclaration de Londres de 1899, est à l'origine de la sphère d'influence française et qui en confirme et en précise les limites par la Convention supplémentaire du 8 septembre 1919 et les accords de 1924.

4.39 L'attitude de l'Italie paraît, *prima facie*, plus contrastée : de 1921 à 1935, elle émet, périodiquement, des protestations à l'encontre de la présence française au-delà de ce qu'elle prétend être la délimitation de 1899. Mais, même ces protestations sont d'interprétation difficile:

- elles se fondent sur le fait -erroné (v. M/T, pp. 185 et s. et CM/T, par. 8.114 et s.)- d'une différence substantielle entre le tracé de 1899 et celui de 1919 ;

- son argumentation privilégiée (elle en changea souvent) montre, *a contrario*, qu'elle reconnaît la validité de la délimitation résultant de la Déclaration de 1899 ;

- elle se fonde avant tout sur des considérations politiques et sur les promesses qui lui ont été faites par l'Accord de Londres de 1915 ;

A l'inverse,

- elle a reconnu, en 1900 et en 1902, à la fois "la frontière de la Tripolitaine indiquée par la carte annexée à la Déclaration du 21 mars 1899" -dont elle connaît parfaitement la provenance (v. *supra*, par. 2.67)- et la validité du partage franco-britannique ; et,

- par la conclusion du Traité LAVAL-MUSSOLINI et ses réactions à l'occasion de plusieurs incidents (dont le plus important est celui de Jef-Jef en 1938), elle témoigne sans ambiguïté de sa conviction du bien-fondé, en droit, de la présence française et de l'existence de la frontière telle que la France la conçoit.

4.40 Quant à la Libye, elle concourt, évidemment, par son attitude constante jusqu'au début des années 1970, à la consolidation du titre français, puis tchadien, que ce soit par son comportement lors de l'incident d'Aozou en 1955, par son mutisme total lors des nombreuses occasions dans lesquelles elle aurait pu et dû s'exprimer si elle avait eu la conviction que la frontière affirmée par la France puis par le Tchad était erronée (v. not. M/T, pp. 320 et s. et CM/T, par. 9.106 et s. et *supra*, par. 1.05 et s.) ou, et peut-être avant tout, par la conclusion, après de longues négociations, du Traité du 10 août 1955 par lequel, devenue souveraine, elle accepte formellement et solennellement le tracé de la frontière.

4.41 Ainsi se trouve confirmée, de manière éclatante, la coïncidence des frontières du Tchad avec les limites de l'ancienne sphère d'influence française. Au demeurant, il ne s'agit pas là d'un phénomène exceptionnel et, sans qu'une étude exhaustive soit nécessaire, il paraît établi que de très nombreuses frontières africaines -probablement la majorité d'entre elles- sont issues des limites des sphères d'influence que s'étaient reconnues les puissances européennes et en ont épousé le tracé à la suite de l'occupation coloniale.

4.42 On peut en donner quelques exemples :

- la frontière entre le Soudan et le Zaïre résulte de l'accord conclu le 12 mai 1894 entre la Grande-Bretagne et le Roi Léopold de Belgique au nom de l'Etat libre du Congo, par lequel les Parties se reconnaissaient mutuellement des zones d'influence correspondant à la ligne de partage des eaux entre le bassin du Nil et celui du Congo ; la frontière actuelle est conforme à ce tracé (*cf.* U.S., Dept. of State, The Geographer, I.B.S. n° 106, 20 oct. 1970 et Ian BROWNLIE, African Boundaries - A legal and Diplomatic Encyclopedia, Hurst, London, 1979, p. 683) ;

- la frontière du Cameroun et de la Guinée équatoriale a été fixée conformément à la ligne prévue par le Protocole du 24 décembre 1885 et la Convention du 15 mars 1894 délimitant les sphères d'influence respectives de l'Allemagne et de la France (*ibid*, p. 545) ;

- et les accords franco-britanniques du 14 juin 1898 et du 21 mars 1899 (Déclaration additionnelle de Londres), ceux-là même qui sont à l'origine de la délimitation des territoires actuels du Tchad et de la Libye, constituent l'origine de la frontière entre le Tchad et le Soudan, sans que des contestations se soient élevées sur ce point. Il en va de même s'agissant de la frontière entre la

République du Centre-Afrique et le Soudan (*cf.* Ian BROWNLIE, *op. cit.*, pp. 597 et s. et 617 et s. (15).

4.43 Il est vrai que, dans ce dernier cas, la convention et le protocole franco-britanniques de 1924 ont réaffirmé et précisé le tracé de la frontière. Mais il s'agit là d'un processus de consolidation dont la présente affaire fournit également un exemple. En effet, contrairement à ce qui s'est produit dans la plupart des cas précités, la transformation de la limite de la sphère d'influence française en une frontière au sens plein du mot ne tient pas à la seule occupation effective par la France ; elle a été consacrée, en 1900-1902, 1919, 1924 et 1955, par une longue série de traités qui tous convergent en une conclusion unique : l'affermissement du titre territorial et frontalier de la France puis du Tchad qui lui a succédé.

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[15] Il ne s'agit là que de quelques exemples ; de très nombreuses autres frontières africaines ont directement leur origine dans les limites des anciennes sphères d'influence coloniales. Il en va ainsi des frontières :
- Angola - Namibie (Déclaration germano-portugaise du 30 décembre 1886) ;
- Kenya - Tanzanie (Echange de notes germano-britannique des 29 octobre et 1er novembre 1886 et Accord du 1er juillet 1890) ;
- Bostwana - Namibie (art. III de l'Accord germano-britannique du 1er juillet 1890 délimitant la sphère d'influence allemande) ;
- Malawi - Tanzanie (Accord germano-britannique du 1er juillet 1890) ;
- Centre-Afrique - Zaïre (Convention entre la France et l'Etat indépendant du Congo du 14 août 1894) ;
- Tanzanie - Zaïre (Convention germano-belge du 11 août 1910) ; etc.

CHAPITRE V.

BONNE FOI ET DROIT DES TRAITES
LA PORTEE DU TRAITE FRANCO-LIBYEN
DU 10 AOUT 1955

5.01 Faute de pouvoir soutenir avec un soupçon de vraisemblance la non-pertinence du Traité d'amitié et de bon voisinage conclu le 10 août 1955 entre la France et la Libye, celle-ci se résigne à en reconnaître la validité mais s'efforce de faire planer un doute sur l'attitude de la France, qui n'est pas partie à la présente instance, et de le vider de toute substance en interprétant son article 3 et l'annexe I à laquelle il renvoie d'une manière aussi compliquée que téméraire.

5.02 La notion de bonne foi est au centre de la mauvaise querelle faite par la Libye tant au Tchad qu'à la France. Au premier, elle reproche d'occulter une partie des travaux préparatoires qui ont abouti à la conclusion du Traité et d'en donner une interprétation inacceptable ; et elle impute à la seconde de sombres desseins qui l'auraient conduite à circonvenir les dirigeants libyens lors des négociations. Ces insinuations ne sont fondées ni en ce qui concerne les origines et les travaux préparatoires du Traité du 10 août 1955 (section 1.), ni pour ce qui est de son interprétation, son contenu ne laissant pas place au doute (section 2.).

SECTION 1. LES ORIGINES ET LES TRAVAUX PREPARATOIRES DU TRAITE DU 10 AOUT 1955

5.03 La République du Tchad n'entend pas revenir sur le détail des négociations préalables à la conclusion, à Tripoli, du Traité du 10 août 1955. Cette procédure complexe qui a son origine dans le Traité de paix de 1947 avec l'Italie, se poursuit avec les débats sur le sort de la Libye au sein des Nations Unies, et aboutit aux négociations bilatérales de Paris (janvier 1955) et de Tripoli (juillet-août 1955), a été longuement analysée dans le

Mémoire (M/T, pp. 99-115, 125-132 et 135-138) et le Contre-Mémoire (CM/T, par. 11.111 à 11.132) tchadiens.

5.04 A ce stade de la procédure écrite, la République du Tchad se limitera donc à une mise au point sur les travaux préparatoires relatifs à la phase ultime des négociations de Tripoli (§ 1) et sur deux questions, artificiellement soulevées par la partie libyenne, au sujet de l'incidence de la résolution 392 (V) de l'Assemblée générale des Nations Unies (§ 2.) et de la bonne foi lors de la négociation du Traité (§ 3.).

§ 1. LES TRAVAUX PREPARATOIRES AU TRAITE DU 10 AOUT 1955

5.05 La Libye regrette, non sans raison, la relative pauvreté des documents relatifs à la dernière phase des négociations ; mais elle en impute, bien à tort, la responsabilité à la République du Tchad qui n'en peut mais. On peut, en revanche, s'étonner de ce que la partie libyenne n'ait pas été à même de produire ses propres archives relatives à la négociation du Traité.

a) Le manque de travaux préparatoires concernant le stade final des négociations (juillet-août 1955)

5.06 Le Contre-Mémoire libyen observe la modestie de travaux préparatoires présentés par le Gouvernement tchadien et touchant la phase finale de la négociation du Traité du 10 août 1955 (*cf.* CM/L, par. 1.39, 1.40 ou 3.33).

5.07 Les documents d'archives mis par le Ministère français des Affaires étrangères à la disposition du public comportent certaines lacunes incontestables. Ainsi, dans le télégramme n° 178/80 du 4 mars 1955, M. DUMARÇAY, Ministre de France à Tripoli, déclare :

> "j'ai adressé ce matin même une note de protestation au Gouvernement libyen et tenu l'Ambassade de Grande-Bretagne informée de cet incident." (M/T, annexe 251).

Le Gouvernement tchadien n'a pas trouvé dans les archives du Quai d'Orsay le texte de la note de protestation dont M. DUMARÇAY fait état. Mais il n'a pas de raison de penser que le diplomate transmettait une information erronée à l'Administration centrale.

5.08 En revanche, lorsque le Contre-Mémoire libyen compare l'abondance relative des documents fournis pour la période décembre 1954-janvier 1955 et notamment les comptes rendus des négociations MENDES FRANCE - BEN HALIM à la pauvreté des archives ayant trait à la négociation finale conduite à Tripoli par M. DEJEAN avec M. BEN HALIM, il s'agit d'un problème distinct.

5.09 La République du Tchad n'avait pas voulu encombrer la Cour avec l'ensemble de la documentation diplomatique française relative à la négociation du Traité du 10 août 1955. Elle n'avait retenu que les documents pertinents relatifs à la frontière entre le Tchad et la Libye. Cependant dans le souci de répondre complètement à la partie libyenne, le Gouvernement du Tchad annexe à la présente réplique l'intégralité de la documentation disponible au Ministère français des Affaires étrangères et concernant la phase ultime de la négociation (juillet-août 1955) (*cf.* R/T, annexes 95 à 97, 100 à 106, 108 à 115, 117 à 132, 134 à 137 et 139).

5.10 Au demeurant la rareté des documents pertinents s'explique. La question de la délimitation de la frontière méridionale de la Libye était relativement secondaire aux yeux des parties et avait été largement réglée dès l'époque 1950-1951, lorsque le Gouvernement français avait pris devant les Nations Unies une position sans équivoque sur le tracé de la frontière en rejetant l'applicabilité du Traité LAVAL-MUSSOLINI de 1935 et en indiquant quels instruments internationaux établissaient à ses yeux la ligne frontière. Cette position du Gouvernement français n'a jamais été mise en cause par la partie libyenne lors des négociations, à l'exception de l'incident du 27 juillet 1955, lorsqu'un officier libyen a produit une carte qui indiquait une frontière contestée sur le Tibesti. L'incident ayant été réglé comme le montre la dépêche transmise par M. DEJEAN au Ministère des Affaires étrangères le lendemain 28 juillet. (M/T, annexe 268), confirmée par le télégramme du 30 de l'Ambassade britannique à Tripoli (R/T, annexe 120), les parties n'avaient aucune raison de s'attarder sur le secteur non disputé de la frontière entre la Libye et les possessions françaises d'Afrique. En revanche, l'examen des archives françaises montre que les difficultés s'accumulèrent entre les parties sur d'autres sujets importants,concernant en particulier l'évacuation des troupes françaises du Fezzan et l'établissement de la ligne frontière à l'ouest de Toummo. Les dépêches diplomatiques françaises n'avaient donc pas lieu de s'étendre sur une question considérée comme réglée à la satisfaction des deux parties.

5.11 De plus, les négociateurs ne semblent pas avoir cherché à établir un procès-verbal des négociations ultimes conduites par l'Ambassadeur DEJEAN et le Premier ministre BEN HALIM pour la bonne raison que ces négociations aboutirent à un texte, le Traité du 10 août 1955. Il n'était donc pas nécessaire, comme en janvier 1955, de tenter de faire le point du progrès des négociations puisque celles-ci étaient parachevées par la signature du Traité. A la connaissance du Gouvernement tchadien, les archives diplomatiques françaises accessibles au public ne contiennent en tout cas aucun élément comparable aux notes établies par les diplomates français lors des négociations MENDES FRANCE / BEN HALIM en janvier 1955.

b) L'absence quasi-totale d'archives libyennes relatives à la négociation du Traité du 10 août 1955

5.12 Si le Gouvernement tchadien ne peut être accusé de rétention de l'information, il n'est pas sûr qu'il en aille de même de la partie libyenne. La République du Tchad constate en effet l'absence quasi-totale d'archives libyennes relatives au Traité du 10 août 1955. Elle s'étonne de la faiblesse des productions libyennes à cet égard. Il semble en effet que le Gouvrnement libyen détienne certaines archives, puisqu'il en fait état dans son Contre-Mémoire. Il s'exprime en ces termes :

> "This is confirmed by the Libyan travaux relating to the 26 July meeting. Annex I made its appearance then, but it only concerned the frontier between Ghat and Toummo and the demarcation commission to demarcate that boundary. There is no mention of the list, which had yet to be added to Annex I" (CM/L, par. 3.32 - souligné dans le texte).

5.13 La partie libyenne admet donc l'existence de documents libyens relatifs à la réunion du 26 juillet mais ne donne aucune indication quant à leur contenu.

5.14 Bien que le texte du Contre-Mémoire libyen ne s'y réfère pas, le passage cité fait sans doute référence au document produit par la Libye en annexe à son Mémoire, volume 6, *exhibit* 73, intitulé "Excerpts of Franco-Libyan negociations of July 1955". Ce document très singulier, sans aucune indication d'origine, semble constitué par des notes prises par les diplomates libyens lors des négociations franco-libyennes de juillet 1955. Il serait évidemment essentiel que ces éléments de preuve soient présentés complètement afin d'éclairer les parties et la Cour sur la position libyenne lors de cette négociation ultime.

5.15 Il convient du reste de relever au passage que la partie libyenne, si prompte à s'indigner des erreurs de procédure qu'elle impute au Tchad, ne s'est pas, quant à elle, acquittée des obligations lui incombant en vertu de l'article 50, paragraphe 2, du Règlement de la Cour. Il résulte en effet de cette disposition que si un document produit à l'appui d'une pièce de procédure "n'est pertinent qu'en partie, il suffit de joindre en annexe les extraits nécessaires aux fins de la pièce dont il s'agit", mais que "copie du document complet" doit être déposée au Greffe "à moins qu'il n'ait été publié sous une forme qui le rende facilement accessible". Cette condition n'étant pas remplie en l'espèce, il appartenait à la Libye, au moins de déposer au Greffe de la Cour l'intégralité du document dont est extrait l'*exhibit* n° 73 joint à son Mémoire (16).

5.16 Le Gouvernement tchadien examinera avec intérêt cet ensemble de documents dont il ne comprend pas pourquoi la Libye ne l'a pas annexé à son Mémoire ou à son Contre-Mémoire pour renforcer sa démonstration. Au demeurant, il observe que les quelques passages cités en annexe au Mémoire ne font que confirmer sa propre argumentation et semblent bien indiquer un accord des parties sur la frontière entre le Tchad et la Libye. Il fait en particulier état à la date du 26 juillet 1955 de l'accord des deux parties sur une lettre interprétative relative aux frontières ainsi décrites :

> "the frontiers : the two parties agreed to an interpretative letter relating to the frontiers, and similarly they agreed to the formation of the Franco-Libyan Committee to demarcate the frontier".

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(16) La même remarque s'applique à l'*exhibit* n° 74.

5.17 Le Gouvernement de la Jamahiryia arabe libyenne analyse cette déclaration comme étant l'accord sur l'annexe I du Traité, mais il limite curieusement cette annexe I à la seule frontière entre Ghat et Toummo sans produire aucun élément de preuve permettant de conforter cette interprétation restrictive (R/T, annexe 173).

§ 2. LA RESOLUTION 392 (V) DE L'ASSEMBLEE GENERALE DES NATIONS UNIES ET LE TRAITE DU 10 AOUT 1955

5.18 Le Contre-Mémoire libyen tente de tirer argument de la résolution 392 (V) adoptée le 15 décembre 1950 par l'Assemblée générale des Nations Unies qui y aurait décidé que la frontière entre la Libye et l'A.E.F. n'était pas délimitée et que la délimitation devait être effectuée après l'accession de la Libye à l'indépendance. Cette interprétation inexacte conduit la partie libyenne à des conclusions erronées quant à la lecture du Traité du 10 août 1955.

5.19 La Libye affirme que, par la résolution 392 (V), l'Assemblée générale

> "called upon France to negociate with Libya, after it had achieved independance ; to delimit its yet undelimited boundaries" (CM/L, par. 3.103 - souligné par la République du Tchad).

Elle laisse ainsi nettement entendre que l'Assemblée générale des Nations Unies a constaté l'absence de délimitation de la frontière méridionale de la Libye. Or le texte de la Résolution ne dit rien de tel et se borne à demander que la frontière, dans la mesure où elle n'est "pas délimitée par des arrangements internationaux, soit délimitée, lors de l'accession de la Libye à l'indépendance, par la voie de négociations entre le Gouvernement libyen et le Gouvernement français". La résolution se garde bien de dire dans quelle mesure la frontière entre la Libye et les possessions françaises d'Afrique est délimitée ou non.

5.20 Cette prudence louable s'explique aisément (M/T, pp. 222-240). Le processus de décolonisation des anciennes colonies italiennes fut conduit sur une période de moins de deux ans, compliquée par la guerre froide et par les rivalités entre empires coloniaux. Dans ce contexte, l'Assemblée générale a considéré qu'il ne lui appartenait pas, en principe, de fixer les frontières mais qu'il convenait de renvoyer la question aux négociations bilatérales entre parties concernées.

5.21 Devant la 17ème Sous-Commission de la première Commission de l'Assemblée générale, M. COUVE de MURVILLE affirma, au nom de la France, le 14 octobre 1949, à l'occasion du débat sur les frontières libyennes :

> "A la connaissance de la France, il n'existe pas de contestations relativement aux frontières de la Libye, ni avec l'Egypte, ni avec la Tunisie, l'Algérie et l'Afrique Occidentale [*sic*] Française". (A/C.I/SC.17/SR.9, p. 15, par. 73 ; R/T, annexe 71) ([17]).

5.22 D'une importance particulière est la déclaration de Philip JESSUP, qui affirme au nom des Etats-Unis, auteurs du projet de résolution, que "l'Assemblée générale ne peut fixer les frontières d'un pays",

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[17] La Libye prétend que les procès-verbaux de ce débat ne sont pas disponibles. Ils se trouvent pourtant aux archives de l'ONU.

mais que "s'il existait un litige, celui-ci devrait être résolu par des négociations directes entre le Gouvernement futur de la Libye et celui du pays voisin intéressé" (*ibid.*, par. 74).

5.23 Cette règle générale de prudence, affirmée par JESSUP en 1949, trouve, l'année suivante, son application s'agissant de la frontière méridionale de la Libye. Le 16 janvier 1950, la Commission intérimaire de l'Assemblée générale demande au Secrétariat de préparer un rapport sur l'ensemble des frontières des anciennes colonies italiennes (*cf.* Doc.A/1368, par. 12). Le 27 janvier suivant, soit dans un délai de onze jours, le secrétariat produit le rapport A/AC.18/103 sur les frontières de la Libye, de l'Erythrée et de la Somalie italienne (*cf.* M/T, annexe 309).

5.24 Dans la fièvre du moment, on comprend que des erreurs se soient glissées dans l'étude du Secrétariat de l'ONU. Ainsi, il affirme que la frontière méridionale de la Libye a été "fixée" par le Traité de Rome de 1935, tout en notant les objections françaises à cet égard (*ibid.*, p. 6). Au demeurant, les auteurs de l'étude ont conscience du caractère approximatif de leur travail puisqu'ils concluent sur ce point : "la Commission intérimaire aura besoin de renseignements complémentaires pour pouvoir déterminer si la frontière est fixée au sens de la résolution de l'Assemblée générale" (*ibid.*, p. 17).

5.25 Le délégué de la France à la Commission politique spéciale de l'Assemblée générale, M. NAUDY, précisa que la frontière méridionale de la Libye avait été fixée par d'autres accords internationaux. Cette interprétation ne fut contestée par aucun autre Gouvernement (M/T, pp. 227-228). Cependant, l'Assemblée générale ne prit pas position sur la thèse française et adopta la résolution 392 (V), laissant aux parties le soin de décider

si la frontière avait été délimitée et, en tant que de besoin, de procéder par voie de négociation.

5.26 La procédure arrêtée par l'Assemblée générale dans sa résolution 392 (V) n'a été, en aucune manière, "contradictory and incorrect" contrairement à ce qu'affirme la Libye (CM/L, par. 3.102). Il s'agissait au contraire de la seule solution raisonnable, compte tenu des délais très courts dans lesquels l'Assemblée générale des Nations Unies œuvra.

5.27 Le Contre-Mémoire libyen procède donc d'une pétition de principe lorsqu'il affirme :

> "In signing the Treaty of 1955, Libya did not thereby accept (...) that a boundary did necessarily exist, based on those treaties. Had a boundary existed there would have been little point in Resolution 392 (V) calling upon France and Libya to negociate a boundary" (CM/L, par. 4.05).

C'est présupposer que l'Assemblée générale a examiné les traités énumérés à l'annexe I du Traité du 10 août 1955, les a considérés comme inapplicables et a enjoint aux parties de négocier une autre ligne frontière.

5.28 En réalité, les choses se passèrent plus simplement. La France et la Libye, au terme de la négociation, reconnurent que leur frontière était fixée par une série d'accords énumérés dans l'annexe I. Les deux parties n'avaient aucune raison d'entrer dans la question abstraite de savoir si, en procédant ainsi, ils reconnaissaient une frontière délimitée au préalable ou s'ils délimitaient la frontière par référence à une série d'accords. Il leur suffisait de fixer la ligne frontière par l'expression du consentement émis par deux Etats souverains lors de l'échange des instruments de ratification du Traité du 10 août 1955. Ce faisant, ils réalisaient pleinement l'objectif fixé par la résolution 392 (V).

§ 3. LA BONNE FOI ET LA NEGOCIATION DU TRAITE DU 10 AOUT 1955

5.29 Le Contre-Mémoire libyen affirme, sans apporter d'éléments de preuve, que la France a contrevenu au principe de bonne foi lors de la négociation du Traité du 10 août 1955 (v. not. CM/L, par. 3.24 - 3.25, 3.68). Il déduit d'une affirmation sans fondement des conséquences inacceptables.

5.30 Le principe de la bonne foi régit les relations entre Etats souverains. Il s'agit d'un principe très général qui est rarement d'application directe et qui trouve sa concrétisation dans des règles plus précises énoncées par le droit international public.

5.31 La présomption de bonne foi gouverne la matière. Les Etats sont présumés être de bonne foi. Il est grave de mettre en cause cette présomption. La charge de la preuve incombe à la partie qui allègue la mauvaise foi dans le comportement d'un Etat souverain. Or la Libye n'apporte aucun élément de preuve à l'appui de ses dires touchant le comportement de la France, -Etat du reste tiers par rapport à la présente procédure-, pendant ces négociations.

5.32 Au demeurant, la Convention de Vienne sur le droit des traités sanctionne le manquement à la bonne foi dans la négociation des accords internationaux par la théorie des vices du Consentement. Or la Libye souligne qu'elle n'invoque pas la théorie des vices du consentement pour demander à la Cour de constater la nullité du Traité du 10 août 1955 :

> "Libya is not invoking French conduct in the negociation of the Franco-Italian Accords of 1900-1902 nor in the negociation of the 1955 Treaty as a ground for invalidating any of these agreements in whole or in part, whether on the ground of fraud or of error" (CM/L, par. 7.09 - souligné dans le texte).

5.33 Si la Libye renonce à invoquer l'erreur ou le dol, faute d'éléments de preuve, elle ne saurait tirer bénéfice d'une sorte de suspicion artificiellement créée à l'encontre d'un Etat souverain pour réclamer une interprétation conforme à ses vues.

SECTION 2. L'INTERPRETATION DU TRAITE FRANCO-LIBYEN

5.34 La thèse du Tchad est connue et a fait l'objet du chapitre III de son Mémoire (pp. 93-140) et de la troisième partie de son Contre-Mémoire (CM/T, pp. 473-559). Il n'aspire qu'à donner aux termes de l'article 3 du Traité leur sens naturel et ordinaire, c'est-à-dire à consacrer les frontières "qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes", ledit échange de lettres reprenant une série de conventions plaçant la frontière au nord de la bande d'Aozou (CM/T, par. 11.10 et 11.11). Cette interprétation textuelle est confortée notamment par un examen du contexte (article 5 du Traité, CM/T, par. 11.53, articles 1, 9, 10 et 11 de la "Convention de bon voisinage" du 10 août 1955, CM/T, par. 11.55 et 11.59), de l'objet et du but du Traité (CM/T, par. 11.68 et ss.), et de la pratique subséquente des Parties, (CM/T, par. 11.76 et ss.).

5.35 La Libye n'apporte pas de réponse à l'ensemble de ces éléments dans son Contre-Mémoire. Ainsi, ni le contexte, ni la pratique des deux Parties dans l'application du Traité ne sont analysés en tant que facteurs d'interprétation. Pourtant, la conduite de la Libye démontre clairement que le Traité de 1955 a été interprété comme contenant le règlement définitif de tout litige frontalier. Par exemple, par l'Accord de bon voisinage du 2 mars 1966, la Libye et le Tchad ont confirmé la frontière définie par le Traité de 1955 en plaçant explicitement de part et d'autre de cette frontière une série de localités sur leurs territoires respectifs (CM/T, par. 11.84 et ss.).

5.36 Plutôt que de suivre les règles d'interprétation codifiées par la Convention de Vienne sur le droit des traités, la Libye préfère recourir à des méthodes insolites d'interprétation (§ 1) et contester sur un point l'interprétation tchadienne : celle de la notion d'actes internationaux "en vigueur" au sens du Traité du 10 août 1955 (§ 2).

§ 1. LA LIBYE RECOURT A DES METHODES INSOLITES D'INTERPRETATION

5.37 La Libye se garde bien de reprendre dans l'ordre, les règles d'interprétation reçues par le droit international : sens naturel et ordinaire des termes, objet et but du Traité, contexte, conduite subséquente, travaux préparatoires, etc... Faisant l'impasse sur ces méthodes usuelles, elle se borne à invoquer le principe de la bonne foi, qu'elle interprète à sa manière, et la règle *contra proferentem*..

5.38 Il est superflu de revenir sur l'absence de toute preuve de la mauvaise foi française -qui ne saurait se présumer- lors de la négociation du Traité du 10 août 1955 et sur l'inélégance des imputations de "fourberie" (CM/L, par. 1.42) et autres amabilités de ce genre faites par la partie libyenne à un Etat non partie à la présente instance (v. *supra*, par. 5.29 et s.).

5.39 La Libye ne précise pas le fondement de la méthode qu'elle invoque et s'appuie, pour toute source, sur des extraits, isolés de leur contexte, d'écrits doctrinaux dont elle sollicite passablement le sens (CM/L, par. 7.01 et s.). L'enseignement essentiel qui s'en dégage est que

> "(...) la bonne foi revêt ici [lors de la conclusion des traités] un contenu indéfini et incertain" (E. ZOLLER, La bonne foi en droit international public, Pédone, Paris, 1977, p. 49 - cité *in* CM/L, par. 7.03),

et qu'elle reçoit un contenu précis dans les règles du droit international relatives à l'interprétation et à la nullité des traités.

5.40 Consciente que l'application de ces règles conduit à des résultats contraires à ses thèses, la partie libyenne se garde bien d'y recourir : elle écarte expressément celles qui sont applicables en matière de nullité (v. *supra*, par. 5.32) et renonçant à se fonder sur la règle générale d'interprétation des traités codifiée par l'article 31 de la Convention de Vienne du 23 mai 1969, elle fait appel à la méthode d'interprétation connue sous le nom de "règle *contra proferentem*", dont elle reconnaît pourtant le caractère subsidiaire :

> "It is very much an auxiliary rule of interpretation to be applied as a last resort when all other methods of interpretation have failed to resolve the problem" (CM/L, par. 7.32 - souligné par la République du Tchad).

5.41 Mais la Libye ne tire pas la conclusion qui s'impose de cette analyse, exacte, de la règle qu'elle invoque et ne se résout pas à examiner le Traité de 1955 à la lumière de "all [the] other methods of interpretation", dont elle reconnaît pourtant la primauté.

5.42 Au demeurant, la règle *contra proferentem* n'est, de toutes manières, pas applicable en l'espèce.

5.43 Le Contre-Mémoire libyen la présente -à juste titre- en ces termes :

> "Doubtful provisions must be interpreted against the State which drafted them" (CM/L, par. 7.31).

5.44 Or les formules utilisées par le Traité du 10 août 1955 ont été négociées entre les parties durant des mois de discussions ardues. Chacun des deux Etats a eu l'occasion d'attirer l'attention de son partenaire sur les questions litigieuses à plusieurs reprises. L'origine même des formules employées n'est pas établie et -au demeurant- est sans importance dès lors que la négociation a été effective.

5.45 La jurisprudence citée par la Libye à l'appui de la règle *contra proferentem* confirme l'interprétation tchadienne. Elle concerne d'une part des Traités de paix imposés unilatéralement par le vainqueur au vaincu, d'autre part l'affaire des Emprunts serbes dans laquelle la disposition litigieuse avait été rédigée par les autorités d'une seule partie (CM/L, par. 7.32 à 7.36).

5.46 Le recours à des méthodes d'interprétation plus orthodoxes conduit d'ailleurs à des résultats plus cohérents et raisonnables.

§ 2. LA NOTION D'"ACTES INTERNATIONAUX EN VIGUEUR"

5.47 L'argumentation libyenne se borne à une interprétation assez saugrenue de la notion d'"actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye" auxquels renvoie l'article 3 du Traité de 1955. Selon la Libye, tel ne serait pas le cas des accords franco-italiens de 1902 et 1919, devenus caducs.

5.48 Cette caducité se déduirait de l'article 44 du Traité de paix de 1947, ainsi rédigé :

> "1. Chacune des Puissances Alliées et Associées notifiera à l'Italie, dans un délai de six mois à partir de l'entrée en vigueur du présent Traité, les traités bilatéraux qu'elle a conclus avec l'Italie antérieurement à la guerre et dont elle désire le maintien ou la remise en vigueur. Toutes dispositions des traités dont il s'agit qui ne seraient pas en conformité avec le présent Traité seront toutefois supprimées.
>
> "2. Tous les traités de cette nature qui auront fait l'objet de cette notification seront enregistrés au Secrétariat des Nations Unies, conformément à l'article 102 de la Charte des Nations Unies.

> "3. Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés."

5.49 En application de cette disposition, les accords franco-italiens de 1902 et de 1919 seraient "tenus pour abrogés", faute d'avoir été notifiés à l'Italie et enregistrés au Secrétariat des Nations Unies. Ils n'auraient donc pu être "en vigueur" au sens de l'article 3 du Traité du 10 août 1955 (CM/L, par. 3.03 et s. ; en particulier par. 3.11) ([18]). Le raisonnement libyen fait l'impasse sur l'article 23 du même Traité, en vertu duquel :

> "1. L'Italie renonce à tous droits et titres sur les possessions territoriales italiennes en Afrique, c'est-à-dire la Libye, l'Erythrée et la Somalie italienne" (le texte complet de l'article 23 est reproduit *supra*, par. 3.39).

5.50 La renonciation par l'Italie à tous droits et titres sur ses anciennes possessions coloniales explique l'absence, dans la liste des traités notifiés au titre de l'article 44, des accords relatifs à des frontières qui ne concernent plus l'Italie. Le sort des possessions devant être réglé par la procédure évoquée dans l'article 23 du Traité (v. *supra*, par. 3.42), il n'appartenait ni à l'Italie, ni à la France dans le cadre de ses rapports bilatéraux avec l'Italie, de considérer les traités relatifs aux frontières des colonies comme maintenus, remis en vigueur ou abrogés. Ayant renoncé à "tous droits et titres", l'Italie ne pouvait, de toutes manières, plus être considérée comme partie à ces traités (v. aussi *supra*, par. 3.44).

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[18] La Libye relève à l'inverse l'omission de quatre autres "actes internaionaux en vigueur" pertinents sur la liste figurant à l'annexe I à laquelle renvoie l'article 3 du Traité : "The 1902 -il faut sans doute lire 1900 ?- Franco-Italian Accords and the Franco-Italian Agreement of 28 October 1912" ainsi que le Protocole et la Déclaration franco-britanniques de 1924 (CM/L, par. 3.14-3.15). Il n'y a pas lieu de s'arrêter à cette remarque : l'accord de 1902 figure sur la liste et renvoie à celui de 1900 ; celui de 1912 n'est pertinent qu'en tant qu'il confirme celui de 1902, et les deux instruments de 1924 ne font que confirmer sur un point précis la Convention franco-britannique de 1919.

5.51 Cette interprétation du texte de l'article 44 du Traité de paix situé dans son contexte est confirmée par l'examen de sa mise en œuvre. La France n'a notifié aucun traité frontalier relatif aux limites de ses possessions coloniales et des anciennes colonies italiennes. Le Royaume-Uni n'a pas davantage notifié de traité concernant ses frontières coloniales avec les anciennes colonies italiennes (R.T.N.U., vol. 104, pp. 41 et s. - *cf.* B/T, annexe 66).

5.52 On ne peut donc tirer de l'article 44 du Traité de paix avec l'Italie aucun argument en faveur ou contre le maintien en vigueur des accords relatifs aux frontières des anciennes colonies italiennes.

5.53 En revanche, il convient de relever que la France a notifié des accords internationaux relatifs à ses frontières métropolitaines avec l'Italie. Le maintien en vigueur de ces textes est intéressant en ce qu'il se combine avec le texte de l'article I du Traité de paix qui dispose :

> "Les frontières de l'Italie demeureront telles qu'elles étaient au 1er janvier 1938, sous réserve des modifications indiquées aux articles 2, 3, 4, 11 et 22. Le tracé de ces frontières est indiqué sur les cartes jointes au présent Traité (annexe I)..."

5.54 Sans vouloir comparer des situations différentes (contrairement à l'Italie, la Libye ne conclut pas en 1955 un Traité de paix et n'accepte pas de modification territoriale), on notera la technique juridique mise en œuvre en 1947 : constatation du maintien en vigueur de certains traités en matière de frontières, plus précision du tracé dans le corps même du Traité de paix. Une technique semblable est utilisée en 1955. Là où la frontière paraît délimitée avec une précision suffisante par les instruments internationaux reconnus par les parties, comme étant en vigueur, l'énumération de ces instruments suffit à la délimitation. Là où les parties en ressentent le besoin - comme entre Ghat et Toummo-, le nouveau traité ajoute les précisions nécessaires.

5.55 Au demeurant, comme la République du Tchad l'a montré (*cf.* CM/T, par. 11.26 et s.), il existe une raison décisive de rejeter l'interprétation de l'article 3 du Traité de 1955 donnée par la Libye. Celle-ci est en effet contredite par le texte même de cette disposition qui renvoie aux "actes internationaux en vigueur à la date de la constitution du Royaume-Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes (annexe 1) "(souligné par la République du Tchad) : le Traité règle lui-même la question en énumérant les textes que les Parties ont considéré comme étant "en vigueur". Dès lors, il n'y a pas lieu de se référer à des éléments extrinsèques pour contourner le sens clair et ordinaire des termes : il suffit de se rapporter à l'annexe I pour découvrir les instruments dont résulte le tracé de la frontière aujourd'hui contestée par la Libye.

5.56 La République du Tchad l'a souligné à maintes reprises dans ses précédentes écritures : le Traité franco-libyen présente une importance exceptionnelle aux fins du règlement du différend soumis à la Cour; certes, il ne fait que confirmer la délimitation de la frontière telle qu'elle existait le 27 décembre 1951, date de l'accession de la Libye à l'indépendance mais, en même temps, il suffit à établir le bien-fondé des conclusions tchadiennes.

5.57 Il est intéressant de relever à cet égard que la Libye ne remet nullement en cause la validité de cet instrument fondamental qu'elle s'efforce seulement de "neutraliser" en s'ingéniant à faire peser des soupçons assez vagues et qu'elle n'étaie par aucun élément concret sur la bonne foi de la France au moment de sa conclusion, et en en donnant une interprétation contraire à ses termes clairs envisagés dans leur contexte et à l'objet et au but du Traité tels qu'ils sont définis dans le préambule : "...le règlement de toutes les questions que posent pour les deux pays leur situation géographique". Ce résultat absurde, déraisonnable, contraire aux objectifs que s'étaient fixés la France et la Libye, ne saurait être admis.

CONCLUSIONS
DE LA REPUBLIQUE DU TCHAD

6.01 Pour les motifs qui sont exposés dans son Mémoire et son Contre-Mémoire et dont certains sont précisés dans la présente réplique, la République du Tchad persiste dans ses conclusions et prie respectueusement la Cour Internationale de Justice de bien vouloir y faire droit.

A La Haye, le 14 septembre 1992

Abderahman DADI
Agent de la République du Tchad

COUR INTERNATIONALE DE JUSTICE

DIFFEREND TERRITORIAL
(JAMAHIRIYA ARABE LIBYENNE C/ TCHAD)

REPLIQUE DU GOUVERNEMENT DE LA REPUBLIQUE DU TCHAD

LIVRE II

Annexes R/T 1 à 78

14 SEPTEMBRE 1992

ANNEXE R/T 1

29 mars 1890

Lettre

de l'Ambassadeur d'ITALIE à PARIS

au Ministre des Affaires étrangères

(Traduction partielle)

TRADUCTION PARTIELLE

Lettre de l’Ambassadeur d’Italie à Paris au Ministre des Affaires Etrangères du 29 mars 1890

Traduction partielle à partir de "Occorre a tale fine..." à "... Tripolitania"

"Il faut à cette fin établir à l’avance les points stables sur lesquels notre démarche puisse s’appuyer:

1° Durant les années 1890-91, l’action diplomatique des quatres puissances (Italie, Autriche-Hongrie, Allemagne et Angleterre) n’a pas soutenu les prétentions territoriales de la Turquie qu’elle a formulées dans la note de contestation présentée à Londres et à Paris contre l’accord anglo-français du 5 août 1890. Cette action prit fin après que "l’irradé" du Sultan eut énuméré les localités aux extrêmes confins de la Tripolitaine où devaient être tenues des garnisons par des militaires.

2° Lors de l’échange de notes à Londres, en même temps que l’accord précité de 1890, la France et l’Angleterre ont admis la possiblité qu’il y ait des droits territoriaux de la Turquie au sud du vilayet de Tripoli, mais elles n’ont pas précisé quels seraient ces droits. En présence des prétentions exagérées de la Porte ottomane, il ne semble pas que les deux puissances aient négocié avec cette dernière à ce sujet.

3° L’Italie fut contrainte par la nécessité des choses à devoir distinguer entre ses intérêts liés à la conservation du statu quo de la Tripolitaine proprement dite et ceux qui concernent la préservation de l’hinterland tripolitain. Les premiers intérêts jouissent d’une garantie générale et résultent des traités européens relatifs à l'intégrité de l'Empire ottoman; les autres, qui ne bénéficient que d'une garantie spéciale, n'auraient probablement pas l'appui des autres puissances si l'Italie entendait s'en prévaloir.

4° En 1897, la France prit l'initiative d'une entente avec l'Italie afin de faire disparaître les défiances réciproques des deux gouvernements au sujet de leurs intentions relatives à la Tipolitaine."

ANNEXE R/T 2

9 février 1891

Dépêche

de l'Ambassadeur d'ITALIE à PARIS

au Ministre italien des Affaires étrangères

(Traduction partielle)

TRADUCTION PARTIELLE

"Ce que je suis venu à savoir, ici, me confirme dans l'opinion que les cabinets de Paris et de Londres ont dû se mettre d'accord pour ne pas donner d'importance aux protestations faites par la Turquie en octobre et, ceci étant, je doute beaucoup de l'efficacité des démarches que je puis entreprendre, maintenant, directement auprès de Lord Salisbury."

ANNEXE R/T 6

24 avril 1899

Sénat (ITALIE)

Séance du 24 avril 1899

Extraits des débats parlementaires

Traduction partielle

TRADUCTION PARTIELLE

Extraits de débats parlementaires: séance du 24 avril 1899 au Sénat (*Atti parlamentari*, Senato del Regno, tornata del 24 aprile 1899, p.941 et s.)

Traduction à partir de "I sottoscritti chiedono..." à "... costa mediterranea dell'Africa." (p.941)

[Le Président du Sénat lit le texte des interpellations]

"Les inscrits demandent à interroger le Ministre des Affaires étrangères et le Président du Conseil afin de savoir:

1° Si le Gouvernement a eu connaissance d'un accord anglo-français par l'effet duquel la France serait en possession des territoires environnants la Tripolitaine;

2° Dans l'affirmative connaître les démarches qui ont été faites ou que le Gouvernement du Roi entend faire afin de porter à la connaissance des puissances amies la gravité qu'aurait un quelconque changement ultérieur des conditions actuelles des Etats situés sur la côte méditerranéenne d'Afrique pour l'Italie, surtout, comme puissance méditerranéenne, mais aussi pour ses intérêts commerciaux."

Traduction à partir de "Egli dice che la teoria ..." à "... fra la Tripolitania e le regioni centrali dell'Africa" (p.944 à 946)

[Le Ministre des Affaires étrangères, CANEVARO, répond au Sénateur DI CAMPOREALE sur la première interpellation]

"Il [DI CAMPOREALE] dit que la théorie des *hinterland* fait désormais partie du droit public européen, et en tire non seulement un droit, mais aussi une obligation pour l'Italie d'aller défendre les *hinterland* des autres.

Mais la théorie des *hinterland* est ainsi faite que chaque pays, allant en Afrique et prenant possession d'une partie de la côte, puisse réclamer pour soi certains droits; de la manière, il acquiert certaines obligations sur l'*hinterland* correspondant. Mais cela n'est pas le cas. Monsieur Di Camporeale rapelle que la Tripolitaine appartient à la Turquie...

DI CAMPOREALE. Je l'ai dit.

CANEVARO, Ministre des Affaires étrangères. ...à la Turquie qui n'a rien voulu faire jusqu'à maintenant pour assurer ses droits sur l'*hinterland*, manquant aussi à ses obligations, tandis que les protestations, que l'on a tentées de faire quelquefois, n'ont pas été prises en considération par les puissances, celles-mêmes qui ont établi la théorie de l'*hinterland*...

DI CAMPOREALE. C'est un ministre français, et non pas italien, des affaires étrangères qui est en train de parler !

CANEVARO, Ministre des Affaires étrangères. Afin de répondre maintenant aux interpellations de Messieurs nos collègues DI CAMPOREALE et VITELLESCHI, il me faut retourner en arrière de quelques années et faire une brève histoire de l'*hinterland tripolitain*.

avant d'en arriver à la Convention anglo-française du 21 mars dont la teneur est désormais connue.

Après l'occupation de la Tunisie, en 1881, il était évident que la France cherchait à étendre son influence au-delà de la frontière méridionale du Beilicato, s'avançant le long de la frontière occidentale de la Tripolitaine, dans les régions où l'*hinterland* algérien se confond avec l'*hinterland* tripolitain.

En revanche, le Gouvernement ottoman, alors qu'il hésitait à négocier avec la France pour définir clairement les limites de la Tripolitaine, de crainte que la négociation puisse apparaitre comme la reconnaissance de la souveraineté française en Tunisie, ne fit rien pour prendre possession de l'*hinterland* tripolitain de sorte que la France put, sans être dérangée, continuer à étendre largement son influence vers le sud.

En 1890, et précisément le 5 août, une Convention signée entre l'Angleterre et la France établissait les frontières entre le Soudan français et les régions du Niger, par une ligne qui de Say sur le Niger allait vers l'est jusqu'à Barrua sur le Lac Tchad; c'est pourquoi, rien n'étant précisé vers l'est, l'on devait retenir que l'influence française pouvait arriver jusqu'à une autre ligne qui de l'extrêmité sud-ouest de la Tripolitaine rejoint Barrua, et ainsi la Tripolitaine commencait déjà à perdre une de ses voies de commerce avec le centre de l'Afrique.

La France déclarait, cependant, dans ces circonstances vouloir respecter les "droits de la Turquie dans les régions établies sur la frontière sud de la Tripolitaine", mais au fond cette expression impliquait seulement le respect des droits du Sultan sur la partie méridionale de la Tripolitaine, à savoir le Fezzan, et non sur l'*hinterland* de la Tripolitaine.

C'est alors que le Gouvernement italien et d'autres gouvernements se sentirent dans l'obligation de soutenir l'intégrité de l'Empire ottoman et commencèrent à s'inquiéter du sort de la Tripolitaine ! Il était à craindre, en effet, que celle-ci, qui n'était pas directement menacée, puisse être tout de même entourée progressivement par les possessions de la France dans l'*hinterland*, et être, d'une certaine manière, étouffée car privée des autres routes par lesquelles s'alimentait encore le commerce, principale activité du *Vilayet*.

Naturellement, l'Italie s'y intéressa plus que les autres; mais l'accord entre les Puissances, alors qu'il apparaissait efficace pour la protection de la Tripolitaine proprement dite, n'avait pas un tel succès pour l'*hinterland*, dans lequel les autres Puissances ne reconnaissaient pas un lien effectif avec le *statu quo* dans la Méditerranée.

A tout cela s'ajoutait qu'une note de la Sublime Porte de novembre 1890 exagérait tellement l'*hinterland* sur lequel le Sultan croyait avoir droit comme souverain de la Tripolitaine qu'elle était de nature à froisser les droits acquis selon la théorie même de l'*hinterland* par la France, l'Allemagne et l'Angleterre. Celles-ci ne pouvaient pas attacher d'importance aux prétentions turques et réglèrent sans tarder leur situation autour du Lac Tchad.

Le 15 mars 1894 eut lieu entre l'Allemagne et la France un autre accord qui délimitait les frontières entre le Cameroun et le Congo français.

Grâce à cet accord, la France, remontant du sud entre le Cameroun et l'Etat libre du Congo jusqu'à l'embouchure du Sciari au sud-est du Lac Tchad, a obtenu pratiquement la côte orientale et septentrionale du Tchad.

Le prétendu *hinterland* de la Turquie était de nouveau considérablement diminué et, à la France, la voie des régions du Nil était ouverte.

En 1894, on tenta également de retenir l'attention de la Turquie sur la situation créée par l'accord franco-allemand, mais on n'obtint rien.

Depuis lors, il était naturel que le Soudan français et le Congo français cherchassent à se réunir du nord et de l'est sur le Tchad, en étendant ainsi l'influence française à tout l'*hinterland* tripolitain en traversant les routes des caravanes qui joignent la côte de Tripoli avec le centre de l'Afrique.

En effet, la France ne tarda pas à obtenir de l'Angleterre ce qu'elle avait déjà obtenu de l'Allemagne.

Un troisième accord entre la France et l'Angleterre, du 14 juin 1898, reconnaissait à la France comme inclus dans sa zone d'influence les bords du nord, de l'est et du sud-est du Tchad jusqu'au Sciari.

De ce rapide exposé, il apparaît qu'à la fin de 1890, l'Angleterre avait déjà commencé à se désintéresser complètement de l'*hinterland* tripolitain tandis que la France le voyait ouvert pour elle sans que personne ne s'y oppose.

Pendant tout ce temps, la Turquie, au lieu de tenter de faire d'une manière ou d'une autre acte de présence dans les oasis principales de l'*hinterland* tripolitain, se préoccupait uniquement de défendre la façade maritime, le *Vilayet*, qu'elle estimait menacé par nous et où elle s'armait et se fortifiait, croyant aux visées ambitieuses de l'Italie. (*Mouvements, conversations*)

Ainsi ce qui nous nuisait, est le fait que loyalement et ouvertement nous nous intéressâmes à la chose plus que les autres Gouvernements. Peut-être, aussi, des agents trop zélés ont rappelé adroitement l'attention de la Porte sur la Tripolitaine, pour mieux la distraire de ce qui se passait dans le désert !

En attendant, en Italie, s'enracinait toujours plus la conviction qu'il nous revenait, plus qu'aux autres, de soutenir l'intégrité de la Tripolitaine et la tranquillité de ses commerces avec l'intérieur. Mais dans les faits, les Cabinets qui se succédèrent au pouvoir, bien que se démontrant de vaillants et efficaces défenseurs du *Vilayet*, pour des raisons tenant à l'intégrité de l'Empire ottoman et au *statu quo* dans la Méditerranée, ne purent s'opposer d'une manière utile à l'influence française qui, peu à peu, envahissait l'*hinterland*. Ainsi, nos notes diplomatiques exprimèrent, pour l'*hinterland* tripolitain, un intérêt plus ou moins direct, mais qui ne trouvait pas d'écho auprès des Gouvernements amis. Pendant ce temps, la France, avec énergie et une forte persévérance, continuait de parcourir les routes de l'*hinterland* avec des expéditions scientifiques, commerciales et militaires, concluant aussi en sa faveur des conventions avec des chefs indigènes de l'*hinterland*.

Telle était la situation quand la victoire anglaise d'Ondurman et l'arrivée à Faschoda de l'expédition Marchand sont intervenues, sucistant le danger d'une terrible guerre entre la France et l'Angleterre; guerre qu'il n'était possible d'éviter seulement en délimitant leur sphère d'influence réciproque en Afrique de sorte que soient sauvés, convenablement, et les intérêts et l'amour propre de chacun d'entre eux.

Aussitôt, j'eus l'intuition, et il était facile de l'avoir, qu'en définitive l'*hinterland* de la Tripolitaine en souffrirait. Je fis, donc, immédiatement les démarches nécessaires, mais il était déjà trop tard depuis longtemps. C'est pourquoi la conséquence naturelle de la politique africaine de ces neuf dernières années était que la guerre entre la France et l'Angleterre ne pouvait être conjurée que grâce à une délimitation entre la vallée du Nil et le bassin du Tchad. Ainsi, on en est arrivé, soudainement mais non pas d'une manière inattendue, à la Convention du 21 mars !

Bien que la Convention ait un caractère négatif et n'engage que les deux nations qui y ont souscrit, elle a tout de même fait une forte impression dans notre pays. Le Gouvernement s'en est également préoccupé tout en étant conscient de ne pas être fautif ou d'avoir été imprudent. Le fait se serait vérifier quel qu'eût été le ministre au pouvoir puisque, comme je pense l'avoir démontré, la Convention est la conséquence inéluctable de la politique suivie en Afrique par toutes les Puissances intéressées pendant les neuf dernières années. Pour arriver à la conclusion finale, il ne manquait que l'occasion propice et celle-ci fut l'appréhension d'une grande guerre que l'on voulait à tout prix éviter et pour l'éviter, nous aussi, nous avons fait ce qui était dans notre pouvoir auprès des deux Gouvernements amis, lesquels étaient prêts à se quereller. Certes, l'on a obtenu une bonne chose en éloignant le grave danger qui menacait la civilisation. Par conséquent, nous ne devons pas trop regretter qu'il en résulte pour l'*hinterland* tripolitain un préjudice futur et incertain que, du reste, nous n'étions pas en mesure d'empêcher.

Je dois ajouter tout de suite que le Gouvernement n'a pas manqué de demander à la France et à l'Angleterre des explications amicales, lesquelles ont été largement accordées et ont levé tous les doutes possibles sur des intentions malveillantes; explications

accompagnées, par ailleurs, de preuves d'amitiés respecteuses de la part des deux Gouvernements. Et les assurances qui nous ont été données reposent sur: 1° qu'il n'y a pas à craindre, ni pour le présent ni pour le futur, de leur part, aucune entreprise contre la Tripolitaine partie intégrante de l'Empire Ottoman; 2° que rien ne sera fait afin de gêner les communications commerciales entre la Tripolitaine et les régions centrales d'Afrique."

ANNEXE R/T 7

14 mai 1899

Lettre

du Consul d'ITALIE à Tripoli

au Ministre italien des Affaires étrangères

(Traduction partielle)

TRADUCTION PARTIELLE

Lettre du Consul à Tripoli au Ministre des Affaires Etrangères du 14 mai 1899

Traduction partielle à partir de "Non credo poi..." à "... quella razza perversa."

Puis, je ne crois pas du tout possible une occupation stable du Tibesti, d'une part, parce que ses habitants jouissent dans tout le Sahara une très mauvaise réputation étant des pillards et des traîtres dépourvus de tout sens moral et toute tradition de l'hospitalité et, d'autre part, parce que le sol de cette oasis est très pauvre. Nachtigal, le seul européen qui l'ait visité, et Reclus décrivent le Tibesti comme une région volcanique et rocailleuse avec de très rares pâturages, peu de palmiers et quelques chèvres. Les Tebbous mangent seulement de temps en temps de la viande et quelques chameaux malades ou inutiles, et il faut une occasion extraordinaire, funérailles ou mariage, pour qu'ils se décident à tuer une chèvre. L'été est pour les Tebbous une saison de disette certaine parce que le sol est insuffisant pour les nourrir et seules les "razzia" leur fournissent les dattes dont ils ont besoin. Les caravanes évitent volontiers de traverser cette oasis maudite et une garnison turque stable n'y trouverait rien pour se nourrir et serait à la merci de cette race perverse (?).

ANNEXE R/T 30

16 février 1915

Document diplomatique italien n°816 intitulé

'Le Ministre des Affaires Etrangères, SONNINO,

à l'Ambassadeur à LONDRES, IMPERIALI'

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 816 intitulé "Le Ministre des Affaires Etrangères, Sonnino, à l'Ambassadeur à Londres, Imperiali"

Traduction partielle à partir de "Qualora le altre Potenze..." à "...Colonie attigue francesi e inglesi." (p.696)

"Dans le cas où les autres Puissances augmenteraient leurs Colonies Africaines au dépens de l'Allemagne, on procèdera à un accord spécial pour assurer à l'Italie quelques compensations équitables correspondantes, en particulier, dans le règlement en sa faveur des questions concernant les frontières entre ses colonies de l'Erythrée, de la Somalie et de la Libye et les colonies contigues françaises et anglaises."

ANNEXE R/T 31

23 mars 1915

Document diplomatique italien n°172 intitulé

"L'Ambassadeur à PARIS, TITTONI,

au Ministre des Affaires Etrangères, SONNINO"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 172 intitulé "L'Ambassadeur à Paris, Tittoni, au Ministre des Affaires Etrangères, Sonnino"

Traduction partielle à partir de "Per l'Africa poi..." à "...la sfera d'influenza inglese dalla francese" (p.143)

"Puis pour l'Afrique, outre les compensations majeures opportunément exigées par V.E. en cas de partage total ou partiel des Colonies allemandes par la Triple Entente, je réitère qu'il serait bon de demander à la France: 1° - que la convention Visconti Venosta pour la Tunisie soit prorogée pour vingt ans; 2° - que nous soit reconnue l'oasis de Barakat; 3° - qu'on nous donne les deux coins qui, selon les accords Prinetti-Delcassé, pénètrent dans la Tripolitaine par Ghadamès et Ghat et par Ghat et Toummo, nous obligeant pour communiquer avec ces localités à traverser les territoires français. La piste caravanière entre ces localités devrait être dans notre territoire.

En outre, nous pourrions demander l'ensemble ou en partie le Tibesti et le Borkou qui, en d'autres temps, étaient considérés comme appartenant à la Tripolitaine. Il serait, aussi, prudent de s'assurer le droit à la liaison de la (Libye) par le futur chemin de fer qui de la Tunisie ira à travers le Sahara vers le lac Tchad, nous assurant les habituelles garanties pour l'exercice cumulatif. A l'Angleterre en échange de Djaraboub, que nous voudrions mais qu'elle ne veut donner à aucun prix, nous pourrions demander Kisimayo à l'embouchure du Gjouba. Au-delà de Koufra que l'Angleterre nous a déjà reconnu, nous pourrions demander une large zone qui porterait notre possession jusqu'à la ligne qui partage la sphère d'influence anglaise de celle française."

ANNEXE R/T 32

14 avril 1915

Document diplomatique italien n°333 intitulé

"L'Ambassadeur à LONDRES, IMPERIALI,

au Ministre des Affaires Etrangères, SONNINO"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 333 intitulé "L'Ambassadeur à Londres, Imperiali, au Ministre des Affaires Etrangères, Sonnino"

Traduction partielle à partir de " Subordinatamente beninteso..." à "...sottoporro previamente a V.E." (p.265)

"En fonction, bien entendu, des ordres de V.E., j'ai dit qu'à mon avis il faudrait rédiger deux documents: le premier, destiné à rester secret, devrait constater l'acceptation de la part des trois Gouvernements des dispositions de notre mémorandum. Au sujet du second, destiné à être publié après la déclaration de notre guerre et avec la date à laisser en blanc et à remplir au moment opportun, on pourrait choisir entre deux possibilités: ou mentionner simplement l'adhésion de l'Italie à la déclaration connue de septembre, ou faire une nouvelle déclaration des quatre Puissances aux mêmes effets. J'ai ajouté que, s'agissant de documents concernant les quatre Puissances, il me semblait préférable de les rédiger en français. Grey est d'accord sur ce point et il m'a dit qu'il se serait adressé à Cambon pour la rédaction qu'il me communiquera et que, bien entendu, je soumettrai préalablement à V.E."

L'AMBASCIATORE A LONDRA, IMPERIALI, AL MINISTRO DEGLI ESTERI, SONNINO (2)

T. GAB. R. SS. 222/105 *Londra, 14 aprile 1915, ore 23,50 (per. ore 4,25 del 15).*

Grey mi ha chiesto oggi (3) quale sarebbe secondo me il *modus procedendi* per la constatazione dell'Accordo.

Subordinatamente beninteso agli ordini di V. E., ho detto sembrarmi che si debbano redigere due documenti: il primo, destinato a rimanere segreto, dovrebbe constatare accettazione da parte dei tre Governi degli enunciati nel nostro promemoria. Circa il secondo, destinato ad essere pubblicato dopo dichiarazione della nostra guerra e con data da lasciarsi per ora in bianco e da riempirsi al momento opportuno, si poteva scegliere tra due alternative: o menzionare semplicemente l'adesione dell'Italia alla nota dichiarazione di settembre, ovvero fare una nuova dichiarazione delle quattro Potenze agli stessi effetti. Ho aggiunto che trattandosi di documenti concernenti quattro Potenze mi pareva preferibile una redazione francese. Grey ha trovato ciò giusto e mi ha detto che si sarebbe rivolto a Cambon per la redazione che mi comunicherà e che beninteso io sottoporrò previamente a V. E.

Circa il primo documento ossia l'accordo sulle nostre condizioni mi parrebbe, ad evitare una traduzione francese, che l'atto possa essere redatto in modo da constatare che l'accettazione da parte dei tre Governi delle predette condizioni, quali sono specificate nel pro-memoria, verrebbe allegata all'atto stesso. Se poi V. E. preferisce che le condizioni entrino nel testo dell'atto, io preparerò una traduzione in francese, ma a scanso di equivoci il mantenere testo italiano mi parrebbe preferibile. In tutto quanto precede sarò grato a V. E. telegrafarmi suoi ordini per poter procedere con Grey ad opportune intese.

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(1) Vedi D. 302, nota 1.
(2) Ed. in SONNINO, *Carteggio*, cit., D. 254.
(3) Vedi D. 330.

ANNEXE R/T 33

15 avril 1915

Document diplomatique italien n°338 intitulé

"Le Ministre des Affaires Etrangères, SONNINO,

aux Ambassadeurs à LONDRES, IMPERIALI, à PARIS, TITTONI,

et à PETROGRAD, CARLOTTI"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 338 intitulé "Le Ministre des Affaires Etrangères, Sonnino, aux Ambassadeurs à Londres, Imperiali, à Paris, Tittoni, et à Petrograd, Carlotti"

Traduction partielle à partir de "(Per tutti) Concordo..." à "...degli anzidetti documenti." (p.269)

"(Pour tous) Je suis d'accord avec la proposition de V.E. au sujet de la rédaction de deux documents. Le premier document qui restera secret, constatera l'acceptation de la part des trois Gouvernements des dispositions de notre mémorandum. Il est préférable que nos conditions soient comprises dans le texte de l'acte qui pourra être rédigé en français.

Le second document à publier après la déclaration de notre guerre contiendra de préférence une déclaration des quatre Puissances aux mêmes effets que la déclaration des alliés de septembre dernier.

J'attends de connaitre de V.E. le texte français des susdits documents."

IL MINISTRO DEGLI ESTERI, SONNINO,
AGLI AMBASCIATORI A LONDRA, IMPERIALI, A PARIGI, TITTONI, E A PIETROGRADO, CARLOTTI (4)

T. GAB. R. SP. 196. *Roma, 15 aprile 1915, ore 18,45.*

(*Per Parigi e Pietrogrado*) R. Ambasciatore a Londra telegrafa quanto segue: « (telegramma Gabinetto n. 222/105 Riservato Speciale) » (5).

Ho risposto ad Imperiali:

(Per Londra) Telegramma di V. E. n. 105 riservato speciale.

(*Per tutti*) Concordo nella proposta di V. E. circa la redazione di due documenti. Il primo documento da rimanere segreto constaterà l'accettazione da parte dei tre Governi degli enunciati nel nostro promemoria. È preferibile che le nostre condizioni siano comprese nel testo dell'atto che potrà avere redazione francese.

Il secondo documento da pubblicarsi dopo la dichiarazione della nostra guerra conterrà preferibilmente una dichiarazione delle quattro Potenze agli stessi effetti della dichiarazione degli alleati nel settembre scorso.

Resto in attesa di conoscere da V. E. il testo francese degli anzidetti documenti.

Firmati tali documenti si procederà tosto dalle parti alla nomina dei rispettivi Delegati per la redazione delle Convenzioni, navale e militare di cui agli articoli 2 e 3, e per la conclusione del prestito di cui all'articolo 14.

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(1) Ritrasmissione a Bucarest del t. 2835/128 del 14 aprile, ore 14,25 con il quale Serra aveva comunicato: "Tutte le truppe concentrate a Porto Said e Alessandria sono partite per teatro Dardanelli dicesi dirette Lemnos. Truppe francesi partiranno fra oggi e domani".

(2) Ed. in SONNINO, *Carteggio*, cit., D. 255.

(3) Vedi D. 330.

(4) Ed. in SONNINO, *Carteggio*, cit., D. 256.

(5) Vedi D. 333.

ANNEXE R/T 34

18 avril 1915

Document diplomatique italien n°378 intitulé

"L'Ambassadeur à LONDRES, IMPERIALI,

au Ministre des Affaires Etrangères, SONNINO"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 378 intitulé "L'Ambassadeur à Londres, Imperiali, au Ministre des Affaires Etrangères, Sonnino"

Traduction partielle: 1) à partir de "Nel pomeriggio d'ieri..." à "...degli articoli modificati:" (p.303-304)

"Dans l'après-midi d'hier, Grey me remit la rédaction française de notre mémorandum sur laquelle les alliés se sont mis définitivement d'accord. A ce propos, il me dit qu'ont été inscrites toutes les modifications proposées par nous, ainsi que quelques autres souhaitées par les alliés.

A l'occasion de l'examen de ladite rédaction, j'ai constaté, à part les suppléments et les modifications dans différents articles sur lesquels V.E. se prononcera, que la rédaction française ne correspond pas parfaitement sur quelques autres points avec le texte italien, j'avertis aussitôt Cambon et, en accord avec lui, on modifia quelques locutions dans le but indiqué.

Voici le texte des articles modifiés:"

2) à partir de "Articolo 13° "Dans le cas où..." à "...aveva formulato alcuna riserva." (p.305-306)

"Article 13° (EN FRANCAIS DANS LE TEXTE) "Dans le cas où la France et la Grande-Bretagne augmenteraient leurs domaines coloniaux d'Afrique au dépens de l'Allemagne, ces deux puissances reconnaissent en principe que l'Italie pourrait réclamer quelques compensations équitables, notamment dans le règlement en sa faveur des questions concernant les frontières des colonies italiennes de l'Erithrée de la Somalie et de la Libye et des colonies voisines de la France et de la Grande-Bretagne. Ces compensations toutefois ne seront pas prises sur la colonie française de l'Oboch-Djibouti dont le territoire est trop restreint pour être diminué et la situation trop importante sur la route de l'Indochine et de Madagascar pour permettre une cession quelconque."

Grey révèla que la réserve pour Oboch avait été introduite par le Gouvernement français et que, pour son compte, le Gouvernement britannique n'avait formulé aucune réserve."

ANNEXE R/T 35

21 avril 1915

Document diplomatique italien n°402 intitulé

"Le Ministre des Affaires Etrangères, SONNINO,

aux Ambassadeurs à LONDRES, IMPERIALI, à PARIS, TITTONI,

et à PETROGRAD, CARLOTTI"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 402 intitulé "Le Ministre des Affaires Etrangères, Sonnino, aux Ambassadeurs à Londres, Imperiali, à Paris, Tittoni, et à Petrograd, Carlotti"

Traduction partielle à partir de "Art.13 - Non so vedere..." à "...qualunque eccezione voglia." (p.324)

"Art. 13 - je ne vois pas de bonne raison pour l'introduction de la seconde phrase relative à Obok-Djibouti, introduction qui apparait inexplicable et inutile: inexplicable dans la mesure où le mémorandum est présenté par l'Italie tandis que la France émet une réserve; inutile car les éventuelles compensations devant se faire en temps utile avec l'accord mutuel des parties, la France pourra toujours demander une exception quelle qu'elle soit."

ANNEXE R/T 36

21 avril 1915

Document diplomatique italien n°404 intitulé

"L'Ambassadeur à PARIS, TITTONI,

au Ministre des Affaires Etrangères, SONNINO"

(Traduction partielle)

TRADUCTION PARTIELLE

Document diplomatique n° 404 intitulé "L'Ambassadeur à Paris, Tittoni au Ministre des Affaires Etrangères, Sonnino"

Traduction partielle à partir de "Dal momento che la Francia..." à "...vivamente presso Delcassé." (p.325)

"Dans la mesure où la France veut que l'on mentionne Djibouti dans l'accord afin de s'assurer qu'il ne fera jamais l'objet d'une cession à l'Italie, il me semble que l'Italie et l'Angleterre devraient surbordonner leur acceptation d'un tel supplément à l'engagement que la France devrait prendre non seulement de ne pas permettre la contrebande d'armes et de munitions, mais aussi de ne pas permettre non plus le simple transit par l'Abyssinie sans l'accord de l'Italie et de l'Angleterre. Pour l'Angleterre, c'est une question très importante. Pour nos possessions de l'Erithrée et de la Somalie, c'est une question vitale de toute première importance. Avec cet engagement de la France, non seulement nous sauverions nos colonies de graves dangers futurs, mais encore nous éliminerions un élément de désaccord certain entre la France et l'Italie. Si la France n'accepte pas, je serais de l'avis de repousser le supplément et au cas où V.E. partagerait cette idée, je pourrais la soutenir vivement auprès de Delcassé.

L'AMBASCIATORE A PARIGI, TITTONI, AL MINISTRO DEGLI ESTERI, SONNINO

T. GAB. R. SP. 264/113. *Parigi, 21 aprile 1915, ore 16 (per. ore 19).*

Telegramma di V. E. Gabinetto n. 216 Riservato speciale (3).

Dal momento che la Francia vuole che si menzioni Gibuti nell'accordo per assicurarsi che non potrà mai formare oggetto di cessione all'Italia, parmi che l'Italia e l'Inghilterra dovrebbero subordinare il consenso a tale aggiunta all'impegno che la Francia dovrebbe prendere non solo di non permettere il contrabbando di armi e munizioni, ma eziandio di non permettere nemmeno il semplice transito per l'Abissinia senza il consenso dell'Italia e dell'Inghilterra. Per l'Inghilterra è questione importantissima. Per i nostri possessi di Eritrea e Somalia è questione vitale di prim'ordine. Con questo impegno della Francia non solo noi salveremo le nostre colonie da gravi futuri pericoli, ma elimineremo un elemento di sicuro dissidio tra la Francia e l'Italia. Se la Francia non consentisse, io sarei d'avviso di respingere l'aggiunta e ove V. E. convenisse in quest'idea, io potrei appoggiarla vivamente presso Delcassé (4).

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(1) Vedi D. 380.

(2) Ritrasmesso a Parigi, Londra, Pietrogrado, Nish, Bucarest e Sofia con T. 1269 del 22 aprile, ore 15. Per le osservazioni di Tittoni e Carlotti vedi DD. 435 e 447.

(3) Ritrasmette i DD. 378, 379 e 382.

(4) Il parere di Sonnino in proposito risulta dal D. 402.

ANNEXE R/T 37

21 avril 1915

Document diplomatique italien n°409 intitulé

"L'Ambassadeur à PARIS, TITTONI,

au Ministre des Affaires Etrangères, SONNINO"

(Traduction intégrale)

TRADUCTION INTEGRALE

Document diplomatique n° 409 intitulé "L'Ambassadeur à Paris, Tittoni, au Ministre des Affaires Etrangères, Sonnino"

Traduction complète du document (p.328)

"L'observation de V.E. à propos de Djibouti est très juste. Soulever la question de la contrebande des armes, question à laquelle l'on pense tout naturellement quand il s'agit de Djibouti, serait un moyen efficace pour obliger la France à ne plus en parler. Delcassé ne m'a jamais parlé de Djibouti. Je dois donc supposer qu'il s'agit d'une suggestion de dernière minute de Cambon lequel il me semble, dans de nombreuses occasions et encore plus à partir de la Conférence de Londres, durant la guerre balkanique, a démontré à notre égard peu de bienveillance."

L'AMBASCIATORE A PARIGI, TITTONI, AL MINISTRO DEGLI ESTERI, SONNINO

T. GAB. R. SP. 267/114. *Parigi, 21 aprile 1915, ore 20,50 (per. ore 23,40).*

Telegramma n. 222/47 Segreto (1).

È giustissima l'osservazione di V. E. circa Gibuti. Il sollevare la questione del contrabbando di armi, che sorge naturale quando si parla di Gibuti, sarebbe un modo efficace per obbligare la Francia a non tenerne più parola. Delcassé di Gibuti non mi ha mai parlato. Devo quindi supporre che si tratta di suggerimento dato all'ultima ora da Cambon il quale in parecchie occasioni e più dal tempo della Conferenza di Londra durante guerra balcanica sembrami abbia dimostrato scarsa benevolenza per noi.

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(1) Vedi D. 402.

ANNEXE R/T 56

1934

TOSCANO (M)

Il Patto di Londra, Bologna

1934

(Extraits)

pp. 53, 161 et 162

(Traduction partielle)

TRADUCTION PARTIELLE

ANNEXE R/T 55 : 1934 - TOSCANO (M) - Il Patto di Londra, Bologna - 1934 - (Extraits)

Page 53 : "Demander à l'Angleterre et à la France des concessions en Afrique comme compensation des avantages qu'elles obtiendront avec l'annexion des colonies allemandes".

Page 161 et 162 : "La question avait été abordée comme s'il suffisait de quelques rectifications des frontières pour la résoudre. En plus, le conditionnel 'pourrait' nous laisse très perplexes sur la portée des obligations assumées par l'Entente, et le verbe 'réclamer' ne paraît pouvoir coexister avec un droit pleinement défini, et affaiblit assurément la valeur de l'engagement".

ANNEXE R/T 63

19 août 1946

Conférence de la Paix (PARIS)

Mémorandum sur les territoires italiens en AFRIQUE

accord with Austria, Germany and Japan, Italy will be admitted to defend the interests and to claim the rights resulting from her status of belligerent."

Doc. No. 4 (P).

Memorandum on the Clauses of the Draft Peace Treaty Concerning the Italian Territories in Africa (Art. 17)

Italy believes that she has sufficiently stressed the importance she attaches to the problem of her African territories through the political and technical documents submitted to the Nations taking part in the Conference.

The Italian Government has already stated that it adheres to the principles of the San Francisco Charter for the administration of territories considered up to now colonial, and has recalled the long record of sympathetic understanding of the natives' problems which stands behind the policy of democratic Italy in the past, as well as the studies carried out by Italian scientists on the subject.

In particular, Italy envisages in a most friendly spirit her relations with the Arab countries and is prepared to consider her African territories a field for collaboration with all local inhabitants. Nor should one forget that many tens of thousands of Italians have long since sunk their roots there, becoming part of the population. They are naturally the first to want a most cordial understanding with the other inhabitants to whom they are bound by the common interests of the country.

It would therefore have been possible to arrive at an equitable solution of this problem along the lines of the proposal examined and favourably received by certain members of the Council of Foreign Ministers in their meeting of May 10, 1946, namely for the United Nations to entrust Italy with a mandate over these territories. In its present reading, Article 17 of the Draft Peace Treaty postpones instead by one year the final decision on the Italian territories in Africa following the proposal of the American Secretary of State to the Council of Foreign Ministers.

The Italian Government fully realizing the spirit governing this postponement proposal, has the following remarks to make on the formulation of Article 17:

1. The present position, both *de jure* and *de facto*, of Libya, Eritrea and Somalia is still that of territories under Italian sovereignty and as such internationally recognized. These territories are under British military occupation (for the major part) and under French military occupation with regard solely to southern Libya.

Under such circumstances, Article 17, as it stands adds to the postponement clause, two very serious conditions:

a. Italy must renounce her sovereignty now, before any decision is taken;

b. Italy must accept for one more year British military administration (and French for a small part).

In other words Article 17, as it now reads, imposes on Italy a renouncement to the only ties still binding her both *de jure* and *de facto* to her African territories. It is thus no longer a matter of simple postponement as proposed at first, but of a formula which implies a decision already taken against Italian interests.

2. This surrender of sovereignty has no juridical justification. If Italy's sovereignty is cancelled by treaty, through the formula of Article 17 (first part), these territories (Libya, Eritrea and Somalia) become, according to international law, "*res nullius*". Such a juridical situation is contrary to Italy's interests as she would thus see all her rights voided, but it would likewise be extremely prejudicial to the general interests of the international community, and this in a part of the world so politically neuralgic as the Middle East. What would be the advantage of such a voiding of Italian sovereignty if the result is merely to increase the instability of the Middle East?

3. The necessity has been mentioned for Italy to renounce beforehand her sovereignty in order that she may be later given the administration in trusteeship of her African territories. But in this case Italian sovereignty should cease at the very moment when the United Nations approve the trusteeship so that no solution [*dissolution?*] of continuity takes place between Italian sovereignty and the new juridical situation under the United Nations.

4. It should be added that even though refugees now living in Italy at public expense or in Rhodesian and Kenya camps are not permitted to return home, two points can still be established beyond doubt. One juridical: Italy's sovereignty; the other factual; the presence of Italians in these territories. Is it fair to ask Italy to sign away her sovereignty, which constitutes the last remaining link with the Italians in Africa whose labours through dozens of years have totally transformed Libya, Eritrea and Somalia?

5. Concerning the provisional administration of these territories, it should be remarked that in occupied territories it is customary to maintain local administration under military control of the occupying Power. But in Italy's African territories (Libya, Eritrea and Somalia) British Military Administration has completely taken the place of Italian administration.

And even when Italians (mostly technicians) are to be found in British offices, they hold only minor positions, and never "jure proprio" (namely not as employees of the previous Italian Administration) but are considered merely experts attached to the British Military Administration.

Up to now this situation, contrary to the "droit de guerre" has been merely a *de facto* one, prolonged, in spite of Italian reservation, even after the end of hostilities.

The clause, now inserted in Article 17, reading "*the said possessions shall continue under their present administration*" would have two consequences: first, it would give juridical recognition to the present *de facto* situation; second, it would prolong it, under the new form, for one year.

Now that the extension of the occupation in Libya, Eritrea and Somalia is being sanctioned by treaty, the Italian Government asks that the administration of these territories shall be submitted to the normal rules of international law under the control of the military occupational Authorities.

In the Attached Doc. 4 bis (P) will be found the text of the proposed amendments to Article 17.

Doc. No. 4 bis (P).

Amendment Proposed

ARTICLE 17

The final disposal of Italy's territorial possessions in Africa, namely Libya, Eritrea and Italian Somaliland, shall be determined jointly by the Governments of the U.S.S.R., U.S.A., U.K. and France, according to the principles laid down in the San Francisco Charter and taking into account Italian interests in said territories, within one year of the coming into force of the present Treaty.

Pending their final disposal, the said possessions shall continue under their present provisional administration.

However, a fair share of this administration shall be entrusted to Italian officials, under control of the military occupation authorities, according to international law.

Said provisional administration shall continue to apply the laws in force in these territories at the moment of their occupation.

Doc. No. 7 (P).

Memorandum on the Clauses of the Draft Peace Treaty Concerning Albania (Art. 21-26)

ARTICLES 21-26

The Italian Government recognizes and undertakes to respect without reservation the full sovereignty and independence of Albania.

New Italy condemns without exception all violations committed by the Fascist Government against those democratic principles on which her institutions are now based. Italy has the strongest desire that her relations with Albania may again become cordial and trustful.

It is in this spirit that the Italian Government approves the general lines of the articles of the draft Treaty concerning Albania. The amendments which the Italian Government proposes in respect to certain clauses of these articles are based, in the first place, on the consideration that, thanks to Italian labour and capital, numerous public works of considerable import have enriched the Albanian territory. It would therefore be fair and equitable that due account should be taken of them. In the second place the Italian Government feels that the rights of Italian subjects in Albania should not be deprived of the protection that international rules have always recognized in similar cases.

Upon detailed examination of the articles, the following remarks can be made:

ART. 21.—Accepted.

ART. 22.—Accepted.

ART. 23.—By this article Italy is asked formally to renounce in favour of Albania all property, rights, interests and advantages of all kinds acquired by the Italian State whether before or after 1939. In this connection the following considerations are submitted:

1. The draft of the Treaty in the case of this article, as in the case of others, places on the same footing the rights acquired by Italy in Albania before and after 1939. The Italian Government wishes to make the preliminary remark that such an approach appears inspired by the principle that all activity by Italy in Albania from 1925 onward was directed against the interests of that country. This principle does not tally with the truth either from an historical point of view or in relation to actual facts. It may be recalled in this connection, that Italian activity in Albania, in the economic and banking field, after 1925, followed closely the recommendations made by the League of Nations (as shown in the book "Italy and Albania").

2. On the other hand, the Draft omits to take into consideration the value of the imposing public works carried out by Italy and the equip-

ANNEXE R/T 65

10 février 1947

Traité de Paix avec l'ITALIE

(Extraits)

PARTIE I

CLAUSES TERRITORIALES

SECTION I—FRONTIÈRES

Article 1

Les frontières de l'Italie demeureront telles qu'elles étaient au 1er janvier 1938, sous réserve des modifications indiquées aux articles 2, 3, 4, 11 et 22. Le tracé de ces frontières est indiqué sur les cartes[1] jointes au présent Traité (annexe I). En cas de divergences entre le texte de la description des frontières et les cartes, c'est le texte qui fera foi.

Article 2

La frontière entre l'Italie et la France, telle qu'elle était au 1er janvier 1938, sera modifiée comme suit:

1. *Col du Petit-Saint-Bernard*

La nouvelle frontière suivra la ligne de partage des eaux en quittant la frontière actuelle à 2 kilomètres environ au nord-ouest de l'Hospice, coupant la route à 1 kilomètre environ au nord-est de l'Hospice et rejoignant la frontière actuelle à 2 kilomètres environ au sud-est de l'Hospice.

2. *Plateau du Mont Cenis*

La nouvelle frontière quittera la frontière actuelle à 3 kilomètres environ au nord-ouest du sommet de Rochemelon, coupera la route à 4 kilomètres environ au sud-est de l'Hospice et rejoindra la frontière actuelle à 4 kilomètres environ au nord-est du Mont d'Ambin.

3. *Mont Thabor-Chaberton*

***(a)* Dans le région du Mont Thabor, la nouvelle frontière quittera la frontière actuelle à 5 kilomètres environ à l'est du Mont Thabor et se dirigera vers le sud-est pour rejoindre la frontière actuelle à 3 kilomètres environ à l'ouest de la Pointe de Charra.**

***(b)* Dans la région du Chaberton, la nouvelle frontière quittera la frontière actuelle à 3 kilomètres environ au nord-nord-ouest du Chaberton qu'elle contournera à l'est, et coupera la route à 1 kilomètre environ de la**

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[1] Nations Unies, *Recueil des Traités*, volume 50.

frontière actuelle qu'elle rejoindra à 2 kilomètres environ au sud-est de la localité de Montgenèvre.

4. *Vallées supérieures de la Tinée, de la Vésubie et de la Roya*

La nouvelle frontière quittera la frontière actuelle à Colla Longa, suivra la ligne de partage des eaux par le Mont Clapier, le Col de Tende et le Mont Marguareis, d'où elle descendra vers le sud par le Mont Saccarello, le Mont Vacchi, le Mont Pietravecchia, le Mont Lega et atteindra un point situé approximativement à 100 mètres de la frontière actuelle près de Colla Pegairolle à 5 kilomètres environ au nord-est du Breil; de là, en direction du sud-ouest, elle rejoindra la frontière actuelle à 100 mètres environ au sud-ouest du Mont Mergo.

La description détaillée des sections de la frontière auxquelles s'appliquent les modifications indiquées dans les paragraphes 1, 2, 3 et 4 ci-dessus, figure à l'annexe II du présent traité, les cartes auxquelles se réfère cette description se trouvant à l'annexe I.

Article 3

La frontière entre l'Italie et la Yougoslavie sera déterminée comme il suit:

La nouvelle frontière suit une ligne partant du point de jonction des frontières de l'Autriche, de l'Italie et de la Yougoslavie, telles qu'elles étaient au 1er janvier 1938, et suivant vers le sud la frontière de 1938 entre la Yougoslavie et l'Italie jusqu'au point de jonction de cette frontière et de la limite administrative séparant les provinces italiennes du Frioul (Udine) et de Gorizia;

de ce point, la ligne se confond avec ladite limite administrative, jusqu'en un point situé approximativement à 0,5 Km au nord du village de Mernico dans la vallée de l'Iudrio.

laissant en ce point la limite administrative séparant les provinces italiennes du Frioul et de Gorizia, la ligne s'étend à l'est jusqu'en un point situé approximativement à 0,5 Km à l'ouest du village de Vercoglia di Cosbana et de là se dirige vers le sud, entre les vallées du Quarnizzo et de la Cosbana, jusqu'en un point situé approximativement à 1 Km au sud-ouest du village de Fleana, après s'être incurvée de manière à couper la rivière de Recca en un point situé approximativement à 1,5 Km à l'est de l'Iudrio, laissant à l'est la route de Cosbana via Nebola à Castel Dobra;

Chervoi, quittant cette route à 0,8 Km à l'est du village de Cucciani, et de là, dans la direction générale sud-sud-ouest, passant environ à 0,4 Km à l'est du mont Braico et approximativement à 0,4 Km l'ouest du village de Sterna Filaria, laissant à l'est la route qui relie ce village à Piemonte, passant à 0,4 Km environ à l'ouest de la ville de Piemonte et à 0,5 Km environ à l'est de la ville de Castagna et atteignant la rivière Quieto en un point situé approximativement à 1,6 Km au sud-ouest de la ville de Castagna.

4. De là la ligne suit le chenal principal rectifié du Quieto jusqu'à l'embouchure de cette rivière et, à travers Porto del Quieto, atteint la haute mer en restant à égale distance de la côte du Territoire Libre de Trieste et de celle de la Yougoslavie.

La carte à laquelle se réfère cette description figure à l'annexe I.

SECTION IV—COLONIES ITALIENNES

Article 23

1. L'Italie renonce à tous droits et titres sur les possessions territoriales italiennes en Afrique, c'est-à-dire la Libye, l'Erythrée et la Somalie italienne.

2. Lesdites possessions demeureront sous leur administration actuelle jusqu'à ce que leur sort définitif soit réglé.

3. Le sort définitif de ces possessions sera déterminé d'un commun accord par les Gouvernements des Etats-Unis d'Amérique, de la France, du Royaume-Uni, et de l'Union Soviétique, dans un délai d'un an à partir de l'entrée en vigueur du présent Traité et selon les termes de la déclaration commune faite par ces Gouvernements le 10 février 1947 et dont le texte est reproduit dans l'annexe XI.

SECTION V—INTÉRÊTS SPÉCIAUX DE LA CHINE

Article 24

L'Italie renonce en faveur de la Chine à tous les privilèges et avantages résultant des dispositions du protocole final signé à Pékin le 7 septembre 1901[1], ensemble tous annexes, notes et documents complémentaires et elle accepte l'abrogation, en ce qui la concerne, desdits protocole, annexes, notes et documents. L'Italie renonce également à toute demande d'indemnité de ce fait.

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[1] De Martens, *Nouveau Recueil général de Traités*, deuxième série, tome XXXII, page 94.

Article 25

L'Italie accepte l'annulation du contrat obtenu du Gouvernement chinois, en vertu duquel la concession italienne de Tientsin a été accordée, et accepte de remettre au Gouvernement chinois tous biens et archives appartenant à la municipalité de ladite concession.

Article 26

L'Italie renonce en faveur de la Chine aux droits qui lui ont été accordés relativement aux concessions internationales de Changhai et d'Amoy et accepte de remettre au Gouvernement chinois l'administration et le contrôle desdites concessions.

SECTION VI—ALBANIE

Article 27

L'Italie reconnaît et s'engage à respecter la souveraineté et l'indépendance de l'Etat albanais.

Article 28

L'Italie reconnaît que l'île de Saseno fait partie du territoire de l'Albanie et renonce à toutes revendications sur cette île.

Article 29

L'Italie renonce formellement en faveur de l'Albanie à tous biens, (à l'exception des immeubles normalement occupés par les missions diplomatiques ou consulaires), à tous droits, concessions, intérêts et avantages de tout ordre en Albanie, appartenant à l'Etat italien ou à des institutions semi-publiques italiennes. L'Italie renonce également à revendiquer tous intérêts spéciaux ou toute influence particulière acquis en Albanie, en conséquence de l'agression du 7 avril 1939 ou en vertu de traités et accords conclus avant cette date.

Les clauses économiques du présent Traité dont peuvent se prévaloir les Puissances Alliées et Associées, s'appliqueront aux autres biens italiens et aux autres relations économiques entre l'Albanie et l'Italie.

Article 30

Les ressortissants italiens en Albanie jouiront du même statut juridique que les ressortissants des autres pays étrangers; toutefois l'Italie clus par les Puissances Alliées et Associées intéressées pour modifier les traités relatifs au bassin du Congo en vue de les mettre en harmonie avec la Charte des Nations Unies et reconnaîtra la validité de ces arrangements.

Article 43

L'Italie renonce à tous les droits et intérêts qu'elle peut avoir en vertu de l'article 16 du Traité de Lausanne signé le 24 juillet 1923[1].

SECTION IX—TRAITÉS BILATÉRAUX

Article 44

1. Chacune des Puissances Alliées ou Associées notifiera à l'Italie, dans un délai de six mois à partir de l'entrée en vigueur du présent Traité, les traités bilatéraux qu'elle a conclus avec l'Italie antérieurement à la guerre et dont elle désire le maintien ou la remise en vigueur. Toutes dispositions des traités dont il s'agit qui ne seraient pas en conformité avec le présent Traité seront toutefois supprimées.

2. Tous les traités de cette nature qui auront fait l'objet de cette notification seront enregistrés[2] au Secrétariat de l'Organisation des Nations Unies, conformément à l'article 102 de la Charte des Nations Unies.

3. Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés.

PARTIE III

CRIMINELS DE GUERRE

Article 45

1. L'Italie prendra toutes les mesures nécessaires pour assurer l'arrestation et la livraison en vue de leur jugement:

(a) des personnes accusées d'avoir commis, ordonné des crimes de guerre et des crimes contre la paix ou l'humanité, ou d'en avoir été complices;

(b) des ressortissants de toute Puissance Alliée ou Associée accusés d'avoir enfreint les lois de leur pays en commettant des actes de trahison ou en collaborant avec l'ennemi pendant la guerre.

2. A la demande du Gouvernement de l'une des Nations Unies intéressées, l'Italie devra assurer en outre la comparution, comme témoins, des

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[1] Société des Nations, *Recueil des Traités*, volume XXVIII, page 11.

[2] Voir la note enregistrée par la Tchécoslovaque, Nations Unies, *Recueil des Traités*, volume 26, page 103.

personnes relevant de sa juridiction dont la déposition est nécessaire pour le jugement des personnes visées au paragraphe 1 du présent article.

3. Tout désaccord concernant l'application des dispositions des paragraphes 1 et 2 du présent article sera soumis par tout Gouvernement intéressé aux Ambassadeurs des Etats-Unis d'Amérique, de France, du Royaume-Uni, et de l'Union Soviétique à Rome, qui se mettront d'accord sur le point soulevé.

PARTIE IV

CLAUSES MILITAIRES, NAVALES ET AERIENNES

SECTION I—DURÉE D'APPLICATION

Article 46

Chacune des clauses militaires, navales et aériennes du présent Traité demeurera en vigueur aussi longtemps qu'elle n'aura pas été modifiée, entièrement ou partiellement, par accord entre les Puissances Alliées et Associées et l'Italie, ou, après que l'Italie sera devenue membre de l'Organisation des Nations Unies, par accord entre le Conseil de Sécurité et l'Italie.

SECTION II—LIMITATION GÉNÉRALES

Article 47

1. *(a)* Le système des fortifications et des installations militaires permanentes italiennes le long de la frontière franco-italienne, ainsi que leurs armements, seront détruits ou enlevés.

(b) Ce système devra être entendu comme comprenant seulement les ouvrages d'artillerie et d'infanterie, qu'ils soient réunis en groupes ou qu'ils soient isolés, les casemates et blockhaus de n'importe quel type, les installations protégées pour le personnel, le matériel et les approvisionnements ainsi que les munitions, les observatoires et les téléfériques militaires, quels que soient leur importance et leur état d'entretien ou leur degré d'avancement, que ces constructions soient en métal, en maçonnerie ou en béton, ou qu'elles soient creusées dans le roc.

2. La destruction ou l'enlèvements prévus au paragraphe 1 ci-dessus s'effectueront dans la limite d'une distance de 20 kilomètres, à partir d'un point quelconque de la frontière telle qu'elle est définie par le présent

ANNEXE R/T 66

13 mars 1948

Note

par laquelle le Gouvernement

du Royaume-Uni de Grande Bretagne

et d'Irlande du Nord a notifié au Gouvernement italien

conformément à l'Article 44 du Traité de Paix avec l'ITALIE

les traités bilatéraux

conclus entre les deux pays avant la guerre

dont le Royaume-Uni désire le maintien

ou la remise en vigueur

No. 1435

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
and
ITALY

Note by which the Government of the United Kingdom of Great Britain and Northern Ireland, in pursuance of article 44 of the Treaty of Peace with Italy, notified the Italian Government of those pre-war bilateral treaties between the two countries which the United Kingdom desires to keep in force or revive. Rome, 13 March 1948

Official text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 27 September 1951.

ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD
et
ITALIE

Note par laquelle le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a notifié au Gouvernement italien, conformément à l'article 44 du Traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre, dont le Royaume-Uni désire le maintien ou la remise en vigueur. Rome, 13 mars 1948

Texte officiel anglais.

Enregistrée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 27 septembre 1951.

No. 1435. NOTE[1] BY WHICH THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, IN PURSUANCE OF ARTICLE 44 OF THE TREATY OF PEACE[2] WITH ITALY, NOTIFIED THE ITALIAN GOVERNMENT OF THOSE PRE-WAR BILATERAL TREATIES BETWEEN THE TWO COUNTRIES WHICH THE UNITED KINGDOM DESIRES TO KEEP IN FORCE OR REVIVE.[3] ROME, 13 MARCH 1948

His Majesty's Ambassador at Rome to the Italian Minister for Foreign Affairs

13th March, 1948

Your Excellency :

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to invite your Excellency's attention to the provisions of Article 44 of the Treaty of Peace with Italy and to notify you that His Majesty's Government in the United Kingdom desire to keep in force or revive the following pre-war bilateral treaties and agreements in respect of the United Kingdom of Great Britain and Northern Ireland and of those other territories for which His Majesty's Government in the United Kingdom are internationally responsible, and to which the under-mentioned bilateral treaties and agreements respectively applied at the time of the outbreak of war :—

1.	Rome	5.ii.1873	Treaty—Extradition[4]
2.	Rome	7.v.1873	Declaration—Rectifying error in above[5]
3.	London	17.iv.1877	Declaration—Estates of deceased seamen[6]
4.	London	8.vi.1880	Agreement—Relief of distressed seamen[7]

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[1] Came into force on 13 March 1948, date of the said note.

[2] United Nations, *Treaty Series*, Vol. 49 and 50.

[3] The texts of treaties and agreements which have been kept in force or revived by the above note are published herein unless previously registered with the League of Nations. In respect of treaties so registered, references are made in footnotes to the relevant volumes of the League of Nations, *Treaty Series*.

[4] See p. 48 of this volume.

[5] See p. 60 of this volume.

[6] See p. 70 of this volume.

[7] See p. 76 of this volume.

5.	Rome	11.viii.1896	Convention—Parcel Post (as regards Malta only)[1]
6.	Rome	18/20.ix.1904	Exchange of Notes—Coasting Trade[2]
7.	Rome	27.xi.1911	Notes extending Extradition Treaty of 1873 to African British Protectorates[3]
8.	Rome	11.v.1922	Convention—War Graves[4]
9.	London Rome	29.x.1925 20.xii.1925	Agreement—Money Orders[5]
10.	Rome	25.i.1929	Exchange of Notes—Passenger Ship Certificates and Emigrant Ship Regulations. Mutual recognition[6]
11.	London Rome	21.viii.1930 28.viii.1930	Agreement—Parcel Post[7]
12.	London	17.xii.1930	Convention—Legal Proceedings in Civil and Commercial matters[8]
13.	Rome	17.ix.1934	Exchange of Notes[9] —Certificates of Airworthiness: Reciprocal Validation
14.	Rome	6.viii.1936	Exchange of Notes[10]—War Graves. Interpretation of Article 7 of Agreement of 11.v.1922
15.	Rome	21.iii. / 3.v. 1938	Agreement—Diplomatic Bags[11]
16.	Rome	21.iii.1940	Agreement—Trade in Medicinal Products[12]

It is His Majesty's Government's understanding that the notification of the above list under the terms of the Treaty of Peace in no way prejudices the right of either of the two Governments to propose revisions in any of the treaties or agreements mentioned in the above list. It is also understood that any of the provisions in the treaties and other agreements in the above list which may be found not to be in conformity with the Treaty of Peace shall be considered to have been deleted in so far as the application of the Treaty of Peace is concerned, but shall be regarded as being in full force with regard to matters not covered by the Treaty of Peace.

In accordance with paragraph 2 of Article 44 of the Treaty of Peace, His Majesty's Government will register with the Secretariat of United Nations the bilateral treaties and other agreements which are kept in force or revived.

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[1] See p. 80 of this volume.

[2] See p. 98 of this volume.

[3] See p. 102 of this volume.

[4] League of Nations, *Treaty Series*, Vol. XI, p. 23.

[5] League of Nations, *Treaty Series*, Vol. XLIX, p. 79, and Vol. LXIX, p. 434.

[6] League of Nations, *Treaty Series*, Vol. XCV, p. 39.

[7] League of Nations, *Treaty Series*, Vol. CXI, p. 91.

[8] League of Nations, *Treaty Series*, Vol. CXXXI, p. 78.

[9] League of Nations, *Treaty Series*, Vol. CLV, p. 85.

[10] League of Nations, *Treaty Series*, Vol. CLXXII, p. 391.

[11] See p. 108 of this volume.

[12] See p. 112 of this volume.

In the absence of separate representation for Ceylon, I have been instructed, at the instance of His Majesty's Government in Ceylon, to notify their desire to bring into force or revive those above-mentioned treaties and agreements which applied to Ceylon at the outbreak of war; and that the Government of Ceylon wish to reserve the right to open negotiations to alter or revoke any of these treaties or agreements, since they were signed prior to the attainment of independence by Ceylon.

I avail, &c.

(*Signed*) V. A. L. MALLET

[Traduction — Translation]

Nº 1435. NOTE[1] PAR LAQUELLE LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD A NOTIFIÉ AU GOUVERNEMENT ITALIEN, CONFORMÉMENT A L'ARTICLE 44 DU TRAITÉ DE PAIX[2] AVEC L'ITALIE, LES TRAITÉS BILATÉRAUX CONCLUS ENTRE LES DEUX PAYS AVANT LA GUERRE, DONT LE ROYAUME-UNI DÉSIRE LE MAINTIEN OU LA REMISE EN VIGUEUR[3]. ROME, 13 MARS 1948

L'Ambassadeur de Sa Majesté britannique à Rome au Ministre des affaires étrangères d'Italie

Le 13 mars 1948

Monsieur le Ministre,

D'ordre du principal Secrétaire d'État de Sa Majesté pour les affaires étrangères, j'ai l'honneur d'appeler l'attention de Votre Excellence sur les dispositions de l'article 44 du Traité de paix avec l'Italie et de lui notifier que le Gouvernement de Sa Majesté dans le Royaume-Uni désire le maintien ou la remise en vigueur des traités et accords bilatéraux antérieurs à la guerre, qui sont énumérés ci-après, en ce qui concerne le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord ainsi que les autres territoires dont le Gouvernement de Sa Majesté dans le Royaume-Uni assure les relations internationales et auxquels lesdits traités et accords bilatéraux s'appliquaient respectivement au moment de l'ouverture des hostilités :

1.	Rome	5 fév. 1873	Traité — Extradition[4]
2.	Rome	17 mai 1873	Déclaration — Rectification d'une erreur dans le traité précédent[4]
3.	Londres.	7 avril 1877	Déclaration — Successions des marins[5]
4.	Londres.	8 juin 1880	Arrangement — Assistance des marins délaissés[7]

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[1] Entrée en vigueur le 13 mars 1948, date de ladite note.

[2] Nations Unies, *Recueil des Traités*, vol. 49 et 50.

[3] Les textes des traités et des accords qui sont maintenus en vigueur ou qui ont été remis en vigueur par la note ci-dessus sont publiés dans le présent volume, sauf dans le cas où ils ont été antérieurement enregistrés auprès de la Société des Nations. En ce qui concerne ces derniers traités, des notes de bas de page renvoient aux volumes correspondants du *Recueil des Traités* de la Société des Nations.

[4] Voir p. 62 de ce volume.

[5] Voir p. 69 de ce volume.

[6] Voir p. 74 de ce volume.

[7] Voir p. 78 de ce volume.

5.	Rome	11 juil. 1896	Convention — Colis postaux (en ce qui concerne Malte seulement)[1]
6.	Rome	18/20 sept. 1904	Échange de notes — Cabotage[2]
7.	Rome	27 nov. 1911	Notes etendant l'application du traité d'extradition de 1873 aux protectorats britanniques d'Afrique[3]
8.	Rome	11 mai 1922	Convention — Sépultures militaires[4]
9.	Londres. . . . . . . Rome	29 oct. 1925 20 déc. 1925	Accord — Mandats-poste[5]
10.	Rome	25 janv. 1929	Échange de notes — Certificats de navigation des navires de passage et reglements relatifs aux navires d'émigrants. Reconnaissance réciproque[6]
11.	Londres. . . . . . . Rome	21 août 1930 23 août 1930	Accord — Colis postaux[7]
12.	Londres.	17 déc. 1930	Convention — Assistance judiciaire en matière civile et commerciale[8]
13.	Rome	17 sept. 1934	Échange de notes[9] — Certificats de navigabilité des aeronefs : validation réciproque
14.	Rome	6 août 1936	Échange de notes[10] — Sépultures militaires. Interpretation de l'article 7 de l'Accord du 11 mai 1922
15.	Rome	$\frac{\text{21 mars}}{\text{3 mai}}$ 1938	Accord — Valises diplomatiques[11]
16.	Rome	21 mars 1940	Accord — Commerce des produits pharmaceutiques[12]

Le Gouvernement de Sa Majesté considère que la notification relative à la liste ci-dessus, donnée conformément aux termes du Traité de paix, ne porte nullement atteinte au droit de chacun des deux Gouvernements de proposer la revision des traités et accords mentionnés dans ladite liste. Il est également entendu que toute disposition figurant dans lesdits traités et autres accords énumérés dans la liste ci-dessus qui pourrait être jugée incompatible avec le Traité de paix sera censée avoir été annulée pour autant qu'il s'agira d'appliquer le Traité de paix, mais sera considérée comme demeurant pleinement en vigueur en ce qui concerne les questions qui ne sont pas visées par ledit Traité.

Conformément aux dispositions du paragraphe 2 de l'article 44 du Traité de paix, le Gouvernement de Sa Majesté fera enregistrer au Secrétariat de l'Organisation des Nations Unies les traités et autres accords bilatéraux qui doivent être maintenus ou remis en vigueur.

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[1] Voir p. 92 de ce volume.

[2] Voir p. 99 de ce volume.

[3] Voir p. 103 de ce volume.

[4] Société des Nations, *Recueil des Traités*, vol. XI, p. 23.

[5] Société des Nations, *Recueil des Traités*, vol. XLIX, p. 79, et vol. LXIX, p. 434.

[6] Société des Nations, *Recueil des Traités*, vol. XCV, p. 39.

[7] Société des Nations, *Recueil des Traités*, vol. CXI, p. 91.

[8] Société des Nations, *Recueil des Traités*, vol. CXXXI, p. 78.

[9] Société des Nations, *Recueil des Traités*, vol. CLV, p. 85.

[10] Société des Nations, *Recueil des Traités*, vol. CLXXII, p. 391.

[11] Voir p. 110 de ce volume.

[12] Voir p. 113 de ce volume.

En l'absence d'une représentation distincte pour Ceylan, j'ai été chargé, à la demande du Gouvernement de Sa Majesté à Ceylan, de notifier que ce Gouvernement désire la mise ou la remise en vigueur des traités et accords précités qui s'appliquaient à Ceylan au moment de l'ouverture des hostilités et que le Gouvernement de Ceylan désire se réserver le droit d'entamer des négociations en vue de modifier ou d'abroger ces traités et accords, étant donné qu'ils ont été signés avant que Ceylan ne parvienne à l'indépendance.

Je saisis, etc.

(*Signé*) V. A. L. MALLET

ANNEXE R/T 67

1er mai 1948

Note

par laquelle le Gouvernement de l'Union Sud-Africaine

a notifié au Gouvernement italien

conformément à l'Article 44 du Traité de Paix avec l'ITALIE

les Traités bilatéraux conclus entre les deux pays

avant la guerre dont l'Union Sud-Africaine

désire le maintien ou la remise en vigueur

No. 3087

UNION OF SOUTH AFRICA
and
ITALY

Note by which the Government of the Union of South Africa, in pursuance of article 44 of the Treaty of Peace with Italy, notified the Italian Government of those pre-war bilateral treaties between the two countries which the Union of South Africa desires to keep in force or revive. Rome, 1 May 1948

Official text: English.

Registered by the Union of South Africa on 27 December 1955.

UNION SUD-AFRICAINE
et
ITALIE

Note par laquelle le Gouvernement de l'Union Sud-Africaine a notifié au Gouvernement italien, conformément à l'article 44 du Traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre dont l'Union Sud-Africaine désire le maintien ou la remise en vigueur. Rome, 1^{er} mai 1948

Texte officiel anglais.

Enregistré par l'Union Sud-Africaine le 27 décembre 1955.

No. 3087. NOTE[1] BY WHICH THE GOVERNMENT OF THE UNION OF SOUTH AFRICA, IN PURSUANCE OF ARTICLE 44 OF THE TREATY OF PEACE[2] WITH ITALY, NOTIFIED THE ITALIAN GOVERNMENT OF THOSE PRE-WAR BILATERAL TREATIES BETWEEN THE TWO COUNTRIES WHICH THE UNION OF SOUTH AFRICA DESIRES TO KEEP IN FORCE OR REVIVE. ROME, 1 MAY 1948

1st May 1948

Ref: T/5

Your Excellency,

I have the honour to refer to Article 44 of the Treaty of Peace[2] with Italy and, by direction from my Government, to inform Your Excellency that the Government of the Union of South Africa desire, in terms of the abovementioned Article, to keep in force or revive the undermentioned pre-war bilateral treaties and agreements between the Union of South Africa and Italy.

In terms of the same Article of the Treaty of Peace, any provisions of the undermentioned treaties or agreements not in conformity with the Treaty of Peace shall be regarded as being deleted from the treaties or agreements in so far as the application of the Treaty of Peace is concerned.

In terms of paragraph 2 of the Article, the Union Government will register these treaties and agreements with the Secretariat of the United Nations.

1. Treaty between Great Britain and Italy for Mutual Surrender of Fugitive Criminals, signed at Rome on February 5th, 1873.[3]
2. Declaration Rectifying an Error in Article XVIII of the Treaty between Great Britain and Italy of February 5th, 1873, for Mutual Surrender of Fugitive Criminals, signed at Rome on May 7th, 1873.[4]
3. Agreement between Great Britain and Italy for Mutual Relief of Distressed Seamen signed at London on June 8th, 1880.[5]

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[1] Came into force on 1 May 1948, date of the said note.

[2] United Nations, *Treaty Series*, Vols. 49 and 50.

[3] United Nations, *Treaty Series*, Vol. 104, p. 48.

[4] United Nations, *Treaty Series*, Vol. 104, p. 60.

[5] United Nations, *Treaty Series*, Vol. 104, p. 76.

4. Treaty of Commerce and Navigation between Great Britain and Italy signed at Rome on June 15th, 1883.[1]

5. Agreement between the British and Italian Governments respecting the Graves of British Soldiers in Italy signed at Rome on May 11th, 1922.[2]

6. Commercial Agreement between the Governments of the Union of South Africa and Italy signed at Cape Town on May 21st, 1935.[3]

7. Exchange of Notes between the Governments of the Union of South Africa and Italy supplementary to the Commercial Agreement of May 21st, 1935, effected at Rome on January 23rd, 1936.[4]

8. Exchange of Notes Amending Article VII of the Anglo-Italian War Graves Agreement of May 11th 1922, effected at Rome on August 6th 1936.[5]

In terms of Paragraph 3 of the Article, all other pre-war treaties and agreements between the Union of South Africa and Italy will be regarded as abrogated.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest esteem and regard.

(*Signed*) F. H. THERON
Envoy Extraordinary and Minister Plenipotentiary
of the Union of South Africa

His Excellency Count Carlo Sforza
Minister of Foreign Affairs
Rome

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[1] De Martens : *Nouveau Recueil général de Traités*, deuxième série, tome 10, p. 530.
[2] League of Nations, *Treaty Series*, Vol. XI, p. 23, and Vol. CLXXII, p. 391.
[3] League of Nations, *Treaty Series*, Vol. CLXXXIX, p. 31.
[4] League of Nations, *Treaty Series*, Vol. CLXXXIX, p. 34.
[5] League of Nations, *Treaty Series*, Vol. CLXXII, p. 391.

[TRADUCTION — TRANSLATION]

Nº 3087. NOTE[1] PAR LAQUELLE LE GOUVERNEMENT DE L'UNION SUD-AFRICAINE A NOTIFIÉ AU GOUVERNEMENT ITALIEN, CONFORMÉMENT À L'ARTICLE 44 DU TRAITÉ DE PAIX[2] AVEC L'ITALIE, LES TRAITÉS BILATÉRAUX CONCLUS ENTRE LES DEUX PAYS AVANT LA GUERRE DONT L'UNION SUD-AFRICAINE DÉSIRE LE MAINTIEN OU LA REMISE EN VIGUEUR. ROME, 1er MAI 1948

Le 1er mai 1948

Réf : T/3

Monsieur le Ministre,

Me référant à l'article 44 du Traité de paix[2] avec l'Italie, j'ai l'honneur, d'ordre de mon Gouvernement, de faire savoir à Votre Excellence que, en application des dispositions dudit article, le Gouvernement de l'Union Sud-Africaine désire maintenir ou remettre en vigueur les traités et accords bilatéraux énumérés ci-après qui ont été conclus avant la guerre entre l'Union Sud-Africaine et l'Italie.

Aux termes de ce même article du Traité de paix, toutes dispositions des traités ou accords énumérés ci-après qui ne seraient pas en conformité avec le Traité de paix seront considérées comme étant supprimées desdits traités ou accords aux fins de l'application du Traité de paix.

Conformément aux dispositions du paragraphe 2 dudit article, le Gouvernement de l'Union enregistrera lesdits traités et accords auprès du Secrétariat de l'Organisation des Nations Unies.

1. Traité entre la Grande-Bretagne et l'Italie relatif à l'extradition des délinquants fugitifs, signé à Rome, le 5 février 1873[3].
2. Déclaration rectifiant une erreur dans l'article XVIII du Traité du 5 février 1873 entre la Grande-Bretagne et l'Italie relatif à l'extradition des délinquants fugitifs, signée à Rome, le 7 mai 1873[4].
3. Accord entre la Grande-Bretagne et l'Italie relatif à l'assistance réciproque aux marins délaissés, signé à Londres, le 8 juin 1880[5].

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[1] Entrée en vigueur le 1er mai 1948, date de ladite note.

[2] Nations Unies, *Recueil des Traités*, vol. 49 et vol. 50.

[3] Nations Unies, *Recueil des Traités*, vol. 104, p. 62.

[4] Nations Unies, *Recueil des Traités*, vol. 104, p. 69.

[5] Nations Unies, *Recueil des Traités*, vol. 104, p. 78.

4. Traité de commerce et de navigation entre la Grande-Bretagne et l'Italie, signé à Rome, le 15 juin 1883[1].
5. Accord entre le Gouvernement britannique et le Gouvernement italien au sujet des sépultures militaires britanniques en Italie, signé à Rome, le 11 mai 1922[2].
6. Accord commercial entre le Gouvernement de l'Union Sud-Africaine et le Gouvernement italien, signé au Cap, le 21 mai 1935[3].
7. Échange de notes entre le Gouvernement de l'Union Sud-Africaine et le Gouvernement italien, additionnel à l'Accord commercial du 21 mai 1935, effectué à Rome, le 23 janvier 1936[4].
8. Échange de notes modifiant l'article VII de l'Accord anglo-italien du 11 mai 1922 relatif aux sépultures militaires, effectué à Rome, le 6 août 1936[5].

Conformément aux dispositions du paragraphe 3 de l'article susvisé, tous les autres traités et accords conclus avant la guerre entre l'Union Sud-Africaine et l'Italie seront tenus pour abrogés.

Veuillez agréer, etc.

(*Signé*) F. H. Theron
Envoyé extraordinaire et Ministre plénipotentiaire
de l'Union Sud-Africaine

Son Excellence Monsieur le comte Carlo Sforza
Ministre des affaires étrangères
Rome

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[1] De Martens : *Nouveau Recueil général de Traités*, deuxième série, tome 10, p. 550.
[2] Société des Nations, *Recueil des Traités*, vol. XI, p. 23, et vol. CLXXII, p. 391.
[3] Société des Nations, *Recueil des Traités*, vol. CLXXXIX, p. 31.
[4] Société des Nations, *Recueil des Traités*, vol. CLXXXIX, p. 38.
[5] Société des Nations, *Recueil des Traités*, vol. CLXXII, p. 391.

ANNEXE R/T 69

7 janvier 1949

Note

par laquelle le Gouvernement australien a notifié

au Gouvernement italien

conformément à l'Article 44 du Traité de Paix avec l'ITALIE

les Traités bilatéraux conclus entre les deux pays

avant la guerre que l'Australie désire maintenir

ou remettre en vigueur

No. 2549

AUSTRALIA
and
ITALY

Note by which the Government of Australia, in pursuance of article 44 of the Treaty of Peace with Italy, notified the Italian Government of those pre-war bilateral treaties between the two countries which Australia desires to keep in force or revive. London, 7 January 1949

Official text: English.

Registered by Australia on 23 April 1954.

AUSTRALIE
et
ITALIE

Note par laquelle le Gouvernement australien a notifié au Gouvernement italien, en application de l'article 44 du Traité de paix avec l'Italie, les traités bilatéraux conclus entre les deux pays avant la guerre que l'Australie désire maintenir ou remettre en vigueur. Londres, 7 janvier 1949

Texte officiel anglais.

Enregistrée par l'Australie le 23 avril 1954.

No. 2549. NOTE[1] BY WHICH THE GOVERNMENT OF AUSTRALIA, IN PURSUANCE OF ARTICLE 44 OF THE TREATY OF PEACE WITH ITALY,[2] NOTIFIED THE ITALIAN GOVERNMENT OF THOSE PRE-WAR BILATERAL TREATIES BETWEEN THE TWO COUNTRIES WHICH AUSTRALIA DESIRES TO KEEP IN FORCE OR REVIVE. LONDON, 7 JANUARY 1949

AUSTRALIA HOUSE, STRAND
LONDON, W.C.2

7th January, 1949

Your Excellency,

In accordance with the terms of Article 44 of the Treaty of Peace with Italy[2] which came into force with respect to Australia on the 9th July, 1948, I have the honour, on the instructions of my Government, to communicate to you, for the information of the Italian Government, that the Australian Government desires to keep in force or revive the following pre-war bilateral treaties or agreements :—

(1) Treaty for the Mutual Surrender of Fugitive Criminals concluded between United Kingdom and Italy on the 5th February, 1873[3] which, prior to the outbreak of war, applied to Australia including the Territories of Papua and Norfolk Island.

(2) Convention regarding Legal Proceedings in Civil and Commercial matters concluded between United Kingdom and Italy on the 17th December, 1930[4] to which Australia, including the Territories of Norfolk Island and Papua and the Mandated (now Trust) Territories of New Guinea and Nauru acceded as from 9th November, 1933.

(3) Agreement between Australia and Italy for the Exchange of Postal Parcels, 1st February-1st June, 1932.[5]

(4) Agreement between Australia and Italy for the Exchange of Money Orders 23rd April-22nd June 1934.[6]

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[1] Deemed to have come into force on 7 January 1949, the date of notification.
[2] United Nations, *Treaty Series*, Vols. 49 and 50.
[3] United Nations, *Treaty Series*, Vol. 104, p. 48.
[4] League of Nations, *Treaty Series*, Vol. CXXXI, p. 78 ; Vol. CXXXVIII, p. 464 ; Vol. CLVI, p. 249 ; Vol. CLX, p. 410, and Vol. CXCVII, p. 324.
[5] See p. 244 of this volume.
[6] League of Nations, *Treaty Series*, Vol. CLXV, p. 107.

It is the understanding of the Government of Australia that the notification of the above list under the terms of the Treaty of Peace in no way prejudices the right of either of the two Governments to propose revisions in any of the treaties or agreements mentioned. It is also understood that any of the provisions in the treaties and agreements in the above list which may be found not to be in conformity with the Treaty of Peace shall be considered to have been deleted so far as the application of the Treaty of Peace is concerned, but shall be regarded as being in full force with regard to matters not covered by the Treaty of Peace.

In accordance with paragraph 2 of Article 44 of the Treaty of Peace, the Australian Government will register with the Secretariat of the United Nations the bilateral treaties and agreements which will be kept in force or revived.

Please accept, Your Excellency, the assurances of my high consideration.

***(Signed)* J. A. BEASLEY**

His Excellency Duke Tommaso Gallarati Scotti
Ambassador Extraordinary and Plenipotentiary
of Italy
14, Three Kings Yard, Davies Street
London, W.1

[TRADUCTION — TRANSLATION]

N° 2549. NOTE[1] PAR LAQUELLE LE GOUVERNEMENT AUSTRALIEN A NOTIFIÉ AU GOUVERNEMENT ITALIEN, EN APPLICATION DE L'ARTICLE 44 DU TRAITÉ DE PAIX AVEC L'ITALIE[2], LES TRAITÉS BILATÉRAUX CONCLUS ENTRE LES DEUX PAYS AVANT LA GUERRE QUE L'AUSTRALIE DÉSIRE MAINTENIR OU REMETTRE EN VIGUEUR. LONDRES, 7 JANVIER 1949

AUSTRALIA HOUSE, STRAND
LONDRES, W.C. 2

Le 7 janvier 1949

Monsieur l'Ambassadeur,

En application des dispositions de l'article 44 du Traité de paix avec l'Italie[2], qui est entré en vigueur à l'égard de l'Australie le 9 juillet 1948, j'ai l'honneur, d'ordre de mon Gouvernement, de prier votre Excellence de faire savoir au Gouvernement italien que le Gouvernement australien désire maintenir ou remettre en vigueur les traités ou accords bilatéraux d'avant guerre qui sont indiqués ci-après :

1) Traité d'extradition conclu le 5 février 1873[3] entre le Royaume-Uni et l'Italie qui, avant l'ouverture des hostilités s'appliquait, à l'Australie, y compris les territoires du Papua et de l'Ile Norfolk.

2) Convention concernant l'assistance judiciaire en matière civile et commerciale, conclue le 17 décembre 1930[4] entre le Royaume-Uni et l'Italie, à laquelle l'Australie, y compris les territoires du Papua et de l'Ile Norfolk et les territoires sous mandat (actuellement Territoires sous tutelle) de la Nouvelle-Guinée et de Nauru, avait adhéré à partir du 9 novembre 1933.

3) Arrangement entre l'Australie et l'Italie concernant l'échange de colis postaux, 1er février-1er juin 1932[5].

4) Arrangement entre l'Australie et l'Italie concernant l'échange de mandats-poste, 23 avril-22 juin 1934[6].

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[1] Considérée comme entrée en vigueur le 7 janvier 1949, date de la notification.

[2] Nations Unies, *Recueil des Traités*, vol. 49 et 50.

[3] Nations Unies, *Recueil des Traités*, vol. 104, p. 62.

[4] Société des Nations, *Recueil des Traités*, vol. CXXXI, p. 78 ; vol. CXXXVIII, p. 464; vol. CLVI, p. 249 ; vol. CLX, p. 410, et vol. CXCVII, p. 324.

[5] Voir p. 256 de ce volume.

[6] Société des Nations, *Recueil des Traités*, vol. CLXV, p. 107.

Le Gouvernement australien considère que la notification de la liste ci-dessus, conformément aux dispositions du Traité de paix ne porte nullement atteinte au droit pour l'un ou l'autre des deux Gouvernements de proposer des changements dans les traités ou accords mentionnés. Il est entendu, en outre, que toute disposition figurant dans les traités et accords énumérés dans cette liste, qui pourrait être jugée incompatible avec le Traité de paix, sera considérée comme ayant été supprimée lorsqu'il s'agira d'appliquer le Traité de paix, mais sera considérée comme demeurant pleinement en vigueur en ce qui concerne les questions qui ne sont pas visées par ledit Traité.

Conformément aux dispositions du paragraphe 2 de l'article 44 du Traité de paix, le Gouvernement australien fera enregistrer au Secrétariat de l'Organisation des Nations Unies les traités et accords bilatéraux qui seront maintenus ou remis en vigueur.

Veuillez agréer, etc.

(Signé) **J. A. BEASLEY**

Son Excellence le duc Tommaso Gallarati Scotti
Ambassadeur extraordinaire et plénipotentiaire
d'Italie
14, Three Kings Yard, Davies Street
Londres, W. 1

ANNEXE R/T 70

16 août 1949

Note

par laquelle le Gouvernement des Pays-Bas a notifié

au Gouvernement italien

conformément à l'Article 44 du Traité de Paix avec l'ITALIE

signé à PARIS le 10 février 1947

les Traités bilatéraux conclus antérieurement à la guerre

entre les deux pays et dont les Pays-Bas désirent le maintien

ou la remise en vigueur

No. 1357

NETHERLANDS
and
ITALY

Note by which the Government of the Netherlands, in pursuance of article 44 of the Treaty of Peace with Italy, signed at Paris on 10 February 1947, notified the Italian Government of those pre-war bilateral treaties between the two countries which the Netherlands desires to keep in force or revive. Rome, 16 August 1949

Official text: French.

Registered by the Netherlands on 13 August 1951.

PAYS-BAS
et
ITALIE

Note par laquelle le Gouvernement des Pays-Bas a notifié au Gouvernement italien, conformément à l'article 44 du Traité de paix avec l'Italie, signé à Paris le 10 février 1947, les traités bilatéraux conclus antérieurement à la guerre entre les deux pays et dont les Pays-Bas désirent le maintien ou la remise en vigueur. Rome, 16 août 1949

Texte officiel français.

Enregistrée par les Pays-Bas le 13 août 1951.

Nº 1357. NOTE[1] PAR LAQUELLE LE GOUVERNEMENT DES PAYS-BAS A NOTIFIÉ AU GOUVERNEMENT ITALIEN, CONFORMÉMENT À L'ARTICLE 44 DU TRAITÉ DE PAIX AVEC L'ITALIE[2], SIGNÉ À PARIS LE 10 FÉVRIER 1947, LES TRAITÉS[3] BILATÉRAUX CONCLUS ANTÉRIEUREMENT À LA GUERRE ENTRE LES DEUX PAYS ET DONT LES PAYS-BAS DÉSIRENT LE MAINTIEN OU LA REMISE EN VIGUEUR. ROME, 16 AOÛT 1949

Rome, le 16 août 1949

Monsieur le Ministre,

J'ai l'honneur d'attirer l'attention de Votre Excellence sur les dispositions de l'article 44 du Traité de Paix avec l'Italie, ratifié par les Pays-Bas le 17 février 1949, et de porter à la connaissance de Votre Excellence que le Gouvernement de Sa Majesté la Reine désire le maintien ou la remise en vigueur des traités bilatéraux suivants, conclus avec l'Italie antérieurement à la guerre :

1. 24 novembre 1863, Turin
   Traité[4] de commerce et de navigation.
2. 11 avril 1868, La Haye
   Convention[5] pour régler réciproquement la position des sociétés par actions (anonymes) et autres associations, avec protocole y annexé, et échange de notes explicatives du 12 janvier et du 2 février 1869.
3. 3 août 1875, La Haye
   Convention[6] consulaire.
4. 3 août 1875, La Haye
   Convention[7] réglant l'admission des consuls italiens dans les principaux ports des colonies néerlandaises.
5. 9 janvier 1884, La Haye
   Convention[8] pour régler l'admission des sujets indigents des deux pays

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[1] Considérés comme ayant pris effet le 16 août 1949, date de la notification au Gouvernement italien.

[2] Nations Unies, *Recueil des Traités*, vol. 49 et 50.

[3] Les textes des traités et des accords qui sont maintenus en vigueur ou qui ont été remis en vigueur par la note ci-dessus sont publiés dans le présent volume, sauf dans le cas où ils ont été antérieurement enregistrés auprès de la Société des Nations. En ce qui concerne ces derniers traités, des notes de bas de page renvoient aux volumes correspondants du *Recueil des Traités* de la Société des Nations.

[4] Voir p. 24 de ce volume.

[5] Voir p. 27 de ce volume.

[6] Voir p. 30 de ce volume.

[7] Voir p. 36 de ce volume.

[8] Voir p. 41 de ce volume.

au bénéfice de l'assistance gratuite devant les tribunaux et les dispenser de fournir la caution *judicatum solvi*.

6. 28 mai 1897, La Haye
Convention[1] pour l'extradition des malfaiteurs.

7. 9 juillet 1900/15 janvier 1901, Rome
Échange de notes comportant un accord[2] pour la reconnaissance des certificats de jaugeage des navires.

8. 20 novembre 1909, Rome
Traité[3] général d'arbitrage.

9. 28 juin 1927, Rome
Échange de notes comportant un accord[4] relatif à la reconnaissance réciproque des lois réglant la navigation et des certificats y relatifs.

10. 17 décembre 1929, Rome
Échange de notes concernant la réciprocité[5] dans l'exécution des commissions rogatoires par les agents diplomatiques et consulaires.

11. 11 mai/23 juin 1931, Rome
Échange de notes[6] en vue de simplifier la procédure suivie jusqu'ici à l'occasion des visites de navires de guerre.

12. 26 octobre 1938, Rome
Échange de notes[7] concernant la navigation aérienne.

13. 30 octobre 1939, Rome
Arrangement[8] pour régler le commerce de produits médicinaux.

Le Gouvernement de Sa Majesté la Reine considère que la notification de la présente liste ne porte aucun préjudice au droit des deux Gouvernements de proposer la révision d'un des traités ou conventions mentionnés ci-dessus. Il est entendu d'autre part que toute disposition de ces traités ou conventions qui ne serait pas en conformité au Traité de Paix, sera toutefois supprimée.

Je vous prie d'agréer, Monsieur le Ministre, les assurances de ma plus haute considération.

R. B. de Lynden
Chargé d'Affaires a.i.

Son Excellence le Comte Carlo Sforza
Ministre des Affaires Étrangères
Rome

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[1] Voir p. 43 de ce volume.
[2] Voir p. 50 de ce volume.
[3] Voir p. 53 de ce volume.
[4] Société des Nations, *Recueil des Traités*, vol. LXVIII, p. 203.
[5] Voir p. 56 de ce volume.
[6] Voir p. 58 de ce volume.
[7] Société des Nations, *Recueil des Traités*, vol. CXCIV, p. 75.
Voir p. 60 de ce volume.

COUR INTERNATIONALE DE JUSTICE

DIFFEREND TERRITORIAL
(JAMAHIRIYA ARABE LIBYENNE C/ TCHAD)

REPLIQUE DU GOUVERNEMENT DE LA REPUBLIQUE DU TCHAD

LIVRE III

Annexes R/T 79 à 177

14 SEPTEMBRE 1992

ANNEXE R/T 98

8 juillet 1955

Copies du télégramme n°859 reçu de INSAFEN

et du télégramme n°224 adressé à INSAFEN

par le Commandant H.ROBERT

COPIE DE TELEGRAMMES

Reçu de INSAFEN le 8 juillet à 09 H.00

N° 859 - SUIVANT INFORMATION PROVENANT GENERAL COMMANDANT EN CHEF FRANCAIS BRAZZAVILLE - TROUPES LIBYENNES PROJETTERAIENT ACTION SUR AOUZOU A PARTIR DE KOUFRA AVEC 30 VEHICULES ET CENTAINE HOMMES - SELON AVIS NOTRE ATTACHE MILITAIRE TRIPOLI, DE PASSAGE A PARIS, CETTE INFORMATION SEMBLE SANS FONDEMENT - VOUS DEMANDE COMMUNIQUER TOUS ELEMENTS RECUEILLIS A CE SUJET ET SI POSSIBLE ORIGINE CES BRUITS.

Télégramme adressé à INSAFEN, le 8 juillet 1955.

N° 224 - SUITE VOTRE TELEGRAMME 859/INS/AFN/EM - AUCUN FAIT, AUCUN RENSEIGNEMENT NE NOUS PERMET D'INFIRMER OU DE CONFIRMER L'IMPORTANTE ACTION SUR AOUZOU PROJETEE SELON GENERAL COMMANDANT SUPERIEUR TROUPES A.E.F. PAR LES TROUPES LIBYENNES - TOUTEFOIS NOTRE OPINION PERSONNELLE EST QUE CETTE ACTION EST FORT DOUTEUSE EN ELLE-MEME ET ENCORE PLUS EN CE QUI CONCERNE LES EFFECTIFS PREVUS - RIEN NE NOUS PERMET ICI DE PRETER A TITRE MILITAIRE ET POLITIQUE DE TELLES INTENTIONS AUX AUTORITES LIBYENNES.

Commandant H. ROBERT

ANNEXE R/T 104

20 juillet 1955

Lettre du Ministre de la France d'Outre-Mer

à M. le Ministre des Affaires Etrangères

MINISTERE DE LA FRANCE D'OUTRE-MER
27, rue Oudinot PARIS 7ème

DIRECTION DES AFFAIRES POLITIQUES
- 2ème Bureau -

Le Ministre de la France d'Outre-Mer
à

Monsieur le Ministre des
Affaires Etrangères
Direction Afrique-Levant
Quai d'Orsay
PARIS -

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limitation des frontières
anco-libyennes.-

Je viens d'être informé par un représentant du Command
en Chef désigné de la Zone Stratégique de l'Afrique Centrale
qu'une réunion, à laquelle mon département n'a pas été convi
s'est tenue à l'Institut National Géographique, qui a abordé
question des frontières franco-libyennes.

Ainsi que j'ai eu l'occasion de vous l'exposer à plusi
reprises, j'ai l'honneur de vous faire connaître que ma posi
à ce sujet n'a pas évolué. J'entends m'en tenir aux disposit
des accords franco-italiens de 1919 et de la déclaration fra
britannique de 1899, et ne saurais admettre que la définitio
de la frontière franco-libyenne puisse être remise en discus
C'est le point de vue que je vous ai tout particulièrement e
primé dans ma lettre N°168 du 10 Février 1955 au sujet de l'
cord de bon voisinage projeté et dont je tiens à vous confir
les termes.

Vos services m'ont, d'autre part, fait savoir que les Gouverneurs Généraux de l'AOF et de l'AEF pourraient envoyer un observateur à Tripoli. J'ai, en conséquence, avisé les Hauts-Commissaires intéressés de la possibilité qui leur était offerte de se faire représenter au sein de la Commission chargée des négociations franco-libyennes./.

Pour le Ministre et par délégation,

A. TOUFFAIT
Directeur du Cabinet

ANNEXE R/T 130

Août 1955

Aide-mémoire sur les négociations franco-libyennes

AIDE-MEMOIRE

La question des frontières a déjà été examinée à plusieurs reprises en séance plénière; j'ai cependant l'impression qu'elle n'a pas été suffisamment éclaircie, même dans ses principes .

Nous avons admis, dans l'Article 3 du Traité d'amitié et de bon voisinage, que les frontières étaient déterminées par les actes internationaux en vigueur. Nous sommes d'accord sur la liste de ces actes. Pour la partie de la frontière située entre Ghadamès, Ghat et Toummo, il s'agit de l'accord franco-italien du 12 septembre 1919.

Pour le secteur de Ghadamès à Ghat, cet accord pose essentiellement le principe de l'établissement entre ces deux localités, en territoire italien (soit, aujourd'hui, en territoire libyen) d'une ligne de communication,c'est-à-dire d'une route de caravanes, praticable en toutes saisons. Cette ligne, et par suite la détermination de la frontière, est indiquée dans le texte de l'accord avec une précision suffisante pour que, dès maintenant, des vérifications puissent avoir lieu utilement sur les lieux .

En revanche, entre Ghat et Toummo, le texte n'énumère aucune localité ; il se borne à poser deux principes : celui des crêtes montagneuses et celui des lignes de communication directes .

.../..

C'est à la lumière de ces deux principes que devraient être déterminés sur la carte quelques points de repère permettant de fixer le tracé général de la frontière et de rendre ainsi possibles les travaux d'abornement sur place .

Je ne dirai rien des incursions auxquelles des détachements fascistes ont pu se livrer en territoire français au cours des années postérieures à 1935, ces violations de la souveraineté française ne pouvant manifestement créer de droits ni au profit de l'Italie, ni au profit de la Libye .

Cela dit, j'ai le sentiment très net que, dans la région de Ghat, la délégation libyenne cherche à déterminer la frontière en s'inspirant de préoccupations étrangères aux principes inscrits dans l'accord du 12 septembre 1919. Ces préoccupations me paraissent de deux sortes : les unes sont de caractère tribal, les autres ont trait à l'utilisation des pâturages .

C'est un fait que la frontière, telle qu'elle résulte des accords de 1919, a séparé les tribus Touareg; 15 à 20.000 membres de ces tribus sont demeurés en territoire français, tandis que 2.500, établis dans la région de Ghat, se sont trouvés en territoire italien, aujourd'hui en territoire libyen .

Le Gouvernement français est parfaitement conscient de la force des liens qui existent entre ces tribus; il a également le plus grand souci de ne pas priver les nomades des pâturages nécessaires à la subsistance de leurs troupeaux. C'est pourquoi il a discuté, avec le Gouvernement libyen, dans un esprit très libéral, les clauses de la convention de bon voisinage relatives au trafic

.../..

caravanier et à la transhumance. Ce projet de convention, dont les termes sont maintenant arrêtés, accorde aux nomades libyens une zone de transhumance allant de Hassi Issendjel à Tin Hanka, Adrar Marinou et In Ezzane, et contenant des pâturages d'excellente qualité comme ceux de l'Oued Tarat, de l'Oued Arrikine et de l'Oued Djerane .

Mais les pâturages sont une chose, la frontière en est une autre. Celle-ci ne peut être déterminée que selon les principes figurant dans l'accord international du 12 septembre 1919 - c'est-à-dire, en ce qui concerne le secteur de Ghat à Toummo, d'après les lignes de crêtes et les lignes de communication directes .

Le règlement très libéral des problèmes de la transhumance et du trafic caravanier, tel qu'il est prévu dans la convention de bon voisinage, devrait permettre aux deux délégations d'aborder la question des frontières dans une parfaite sérénité et de rechercher en commun sur la carte, à la lumière des principes en question, les quelques points par lesquels doit nécessairement passer la frontière entre Ghat et Toummo .

C'est dans cet esprit qu'a été rédigée la lettre que j'ai adressée au Premier Ministre et qui indique trois points sur lesquels un accord devrait pouvoir être recherché, d'autant qu'il est déjà acquis en ce qui concerne deux d'entre eux (Col d'Anaf et cote 1010). Le soin de préciser le tracé serait laissé à la Commission mixte d'abornement dont nous avons, de part et d'autre, accepté la création, et qui pourrait se réunir et opérer sur place, dès que les conditions climatiques le permettront .

J'ajoute que pour apaiser les inquiétudes libyennes, dont je ne conteste pas la légitimité, je suis tout prêt à m'engager, au nom du Gouvernement francais, à reconnaître le caractère ancestral et traditionnel de la transhumance et du trafic caravanier, qui permettent aux tribus de maintenir leurs liens et leurs habitudes de vie par-delà les frontières.

En revanche, les divergences de vue qui sont apparues entre les deux délégations au sujet de la délimitation des frontières dans le secteur de Ghat et qui sont allées jusqu'à l'expression de doutes sur l'appartenance du poste de Tin Alkoum - pourtant manifestement français -, sont pour moi une grave cause de préoccupations. Elles sont, en effet, de nature à provoquer, par la suite, des différends qui pourraient nuire au développement des relations d'amitié et de bon voisinage sincèrement souhaitées par les deux Gouvernements. Je suis convaincu que nous devons faire l'effort le plus sérieux pour les aplanir, afin d'assurer ainsi pleinement, pour l'avenir, la mise en oeuvre du futur traité ./.

ANNEXE R/T 140

VILLARD (H.S.)

- LIBYA -

The New Arab Kingdom of North Africa

Cornell University Press

- 1956 -

pages XI, 2 et 3, 140-141, et 148 à 151

Sayed Mohamed Idris el Senussi, first King of Libya.

LIBYA

The New Arab Kingdom of North Africa

HENRY SERRANO VILLARD

Cornell University Press
ITHACA, NEW YORK

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TO MY WIFE, *who persuaded*
me that this book should be written

Preface

THE views expressed in this book are those of the author and do not necessarily reflect the views of the Department of State. The author has no present responsibility for United States policy toward Libya. He has, however, endeavored to bring together for the first time the pertinent facts relating to ancient and modern Libya; to give a firsthand account of that country's emergence —under the tutelage of the United Nations—as a sovereign state; and to tell of certain personal experiences that may help the reader to understand the new nation and its people. If in so doing the author has been able to contribute to public knowledge of Libya, he will feel amply rewarded.

The photographs appearing in this book were supplied by various individuals, excepting those taken by the author himself. To all of these friendly sources the author wishes to express his thanks—in particular to Mr. Alfred W. Cook for the photographs appearing in illustrations 1, 2, 5, 6, 7, 8, 15.

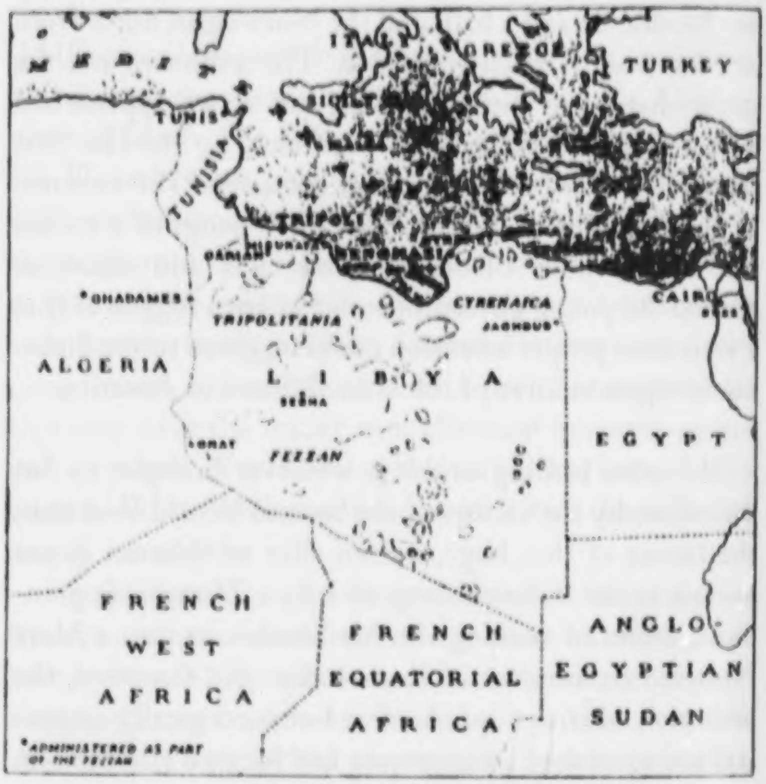
HENRY S. VILLARD

January 9, 1956

As we made preparations to land in the Africa that was to be our home for the next two or three years, a sense of adventure crept over all of us in the cabin of the C-47 — my wife Tamara, our son Dimitri, aged nine, our daughter Sandra, six and a half, and the Norwegian nurse from our last post, Kirsten Jorgensen. The unknown and the unfamiliar await most travelers; but as we approached Libya, our expectancy was heightened by the fact that our arrival had been postponed because of the violence of the elections in Tripoli. The birth pangs of a nation are not without bloodshed, and riots and disorders rocked the young government. It had been suggested that I wait until proper attention could be given to the diplomatic representative of the United States of America.

No more baffling problem was ever brought up for discussion by the victors of the Second World War than the future of that huge, barren slice of Saharan desert known as the Italian colony of Libya. Mussolini's grandiose dream of turning the Mediterranean into a Mare Nostrum reminiscent of Roman days had shattered; the liberation of that unproductive but strategically important sector of the Fascist empire had focused attention on what was in truth an Arab land, and the question of its ultimate disposition had aroused the keenest interest in all Arab countries. No one could have foretold at the close of hostilities, however, that the final solution for the inhabitants of that sun-scorched territory was to be a decision by the United Nations on November 17, 1949, that Libya should become a fully sovereign country.

Whether the Libyan people were ready for self-government after centuries of alien rule is a matter of pointless controversy today. The fact is that after exhaustive argument and examination of other proposals, the United Nations decreed that the experiment should go into effect not later than January 1, 1952. With a scant week to spare, the independence of the United Kingdom of Libya was proclaimed on Christmas Eve,


MEDIT
ITALY
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MALTA
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TRIPOLI
MISURATA
BENGHAZI
GARIAN
*GHADAMES
TRIPOLITANIA
CYRENAICA
JAGHBUB*
CAIRO
ALGERIA
L I B Y A
SEBHA
GHAT
FEZZAN
EGYPT
FRENCH WEST AFRICA
FRENCH EQUATORIAL AFRICA
ANGLO-EGYPTIAN SUDAN
*ADMINISTERED AS PART OF THE FEZZAN

Libya and surrounding area.

public and baracanned Arabs mingle with the foreign populace in a first-hand inspection of the craft parked on the ramp.

An air of permanence surrounds this transplanted offshoot of the American way of life. Residential units, Florida style, house families of Air Force personnel; bachelor barracks are clean and comfortable. A Post Exchange, a commissary, a post office, bring the United States as close as the nearest American shopping center. Recreational facilities that build morale include a large movie house, a library, bowling alleys, tennis courts, golf courses, and a wide stretch of bathing beach. Air-conditioning, social clubs, power plants, and water tanks compensate for the isolation and the not infrequent ghiblis. There is a hospital and dental clinic, both regarded as the best in Libya by King Idris and officials of his government. The Dependent's School provides instruction for Americans from kindergarten through high school. From the number of school children—more than six hundred—a rough idea may be gained of the size of the base.

Into the building of this model installation went the labor of thousands of native workmen, as well as the services of local Italian or other foreign contractors. Something like ten million American dollars annually has been spent on the purchase of local goods and services, and many Libyan employees have received practical instruction in a gainful occupation, such as that of garage mechanic—no mean contribution to the Libyan economy. The officers and men stationed at the base have been models of deportment, so that relations between them and the people of Tripoli are excellent.

An important phase of my assignment in Libya was the negotiation of an agreement covering the continued use of Wheelus Field and related military facilities. When I sailed for my post shortly after the Proclamation of Independence on December 24, 1951, I was under the impression that the task would be comparatively easy. Time was to prove this more a mirage than a fact, and patience became the watchword of the discussions.

The Libyans showed themselves to be able negotiators, conscious of the dignity of their country as a sovereign state. Obviously, the United States government could not do less than take into account the viewpoint of a fully independent Libya, and I found myself on more than one occasion explaining the American attitude in this respect. Although negotiations were prolonged, there was never any doubt in the mind of either party that a mutually satisfactory agreement would eventually be placed on the books. The negotiations, drawn out over the entire period of my stay in Libya, were crowned with the visit to Washington of Prime Minister Ben Halim—a successor to Mahmud Muntasser—in the summer of 1954, at which time I attended a luncheon given in his honor by President Dwight D. Eisenhower at the White House. Shortly thereafter an agreement was signed in Benghazi, with the most amicable feeling on both sides. On the insistence of King Idris, who had several times in the past demonstrated to me that his desire for firm and friendly relations with the United States was as ardent as

Jewish Territorial Organization seeking a site for a Jewish home. The conclusion of the committee which examined the potentialities of that territory was that "the scheme would literally not hold water."

If progress is to be made, if Libya is to grow up into sturdy adolescence, assistance must be formulated with the economic difficulties constantly in view. Conscious of at least some responsibility for the welfare of its offspring, the United Nations has taken certain steps to enlist the aid of member states in providing financial help for Libya. Concrete results so far, however, have not been impressive, although the Libyan government has not been slow in reminding the international organization of what it considers to be a moral obligation. In 1953, at the instigation of Libya, the United Nations General Assembly invited member governments to utilize the well-established channels and instruments within the United Nations structure for contributing to Libya's support. The United Nations itself does not, of course, have funds of its own which it could appropriate for Libyan use, but it can metaphorically pass the hat in behalf of its protégé. The final outcome of this move has yet to be disclosed.

It is probably only natural that the Secretary General of the United Nations should look expectantly for a response to those who were in the forefront of the sponsoring powers for Libyan independence. The United States takes the view that American aid is already being extended to Libya through United States participation in the United Nations Technical Assistance program;

through the $40,000,000 Economic Assistance Agreement of 1954; through substantial grants of relief wheat; and through the American contribution to the Technical Cooperation Program (Point Four) operated by the United States and Libya, which since 1952 has amounted to $16,000,000. This generous effort would appear to set an example for other voluntary contributions; beyond it, the United States can scarcely be expected to go, although its sympathy and support for all types of United Nations assistance to Libya will undoubtedly continue to be demonstrated.

From the day of independence, at the end of December in 1951, the Libyan government contemplated the prospect of negotiating an agreement with the French—as in the case of the British and the Americans—which would regularize the presence of French forces on Libyan soil and which in return would bring a contribution for economic aid. In this instance, the negotiations concerned the Fezzan, to which Paris attached some importance because of its location next to Tunisia and the usefulness of its airstrips in the French African communications system. It proved more difficult, however, for the Libyans to reach an agreement with the French than with the other two powers whose victory in the Second World War resulted in the liberation of Libya.

Not until August 1955 did it become possible for the energetic Ben Halim, who had succeeded to the prime ministership when little headway was being made in the negotiations, to bring the matter to a successful conclusion. An accord was finally signed between the two governments providing for the evacuation of French troops from the areas they had occupied in the Fezzan ever since General Leclerc drove out the Italians. French technicians were permitted temporarily to remain at Sebha, Ghat, and Ghadames to operate the airstrip and radio facilities. In return, a French contribution of approximately $1,000,000 was to be paid annually on a renewable basis to the Libyan treasury. Thus the arrangements under which Libya could claim the support of the three great democracies—the United States, the United Kingdom, and France—were complete, and one more source of income was added for the furtherance of United Nations objectives in the establishment of Libya.

The United Nations in return has a right to expect something from its ward. The position is best summed up in the following quotation from the final chapter of Commissioner Adrian Pelt's second report on Libya to the United Nations General Assembly:

> The Libyan people owe their independence as much to the United Nations as to their own efforts. From now on, they will have to direct their efforts towards new goals so as to make the best possible use of their new status, while the United Nations will have to continue recognizing the special responsibility which it has avowedly assumed in granting Libya independent statehood. By following a democratic way of life, respecting human rights, and by concentrating on a peaceful economic and social development, the Libyan people can best repay their debt of gratitude to the United Nations and thus continue to merit the foreign assistance they will require in the future.

By all odds, the most bizarre fact about Libya is that the parent body which created the country did not see fit to admit the child into the family circle for a period of six years. That unfortunate state of affairs was, of course, due solely to the exercise of the veto by the Soviet Union. Although frequent attempts were made to reach a compromise with the Soviets on the admission of new members, and to gain entry for such unoffending nations as Libya, the rules of the United Nations Charter rigidly prescribe that a single blackball in the Security Council prevents an applicant from joining the club. The Soviets had originally supported the 1949 resolution, which called for Libya's membership on attainment of independence, but a change in their attitude at the United Nations was noticed during the General Assembly session of 1950. Criticizing the progress of the program for transfer of authority to the people of Libya, Soviet delegates asserted that the British and French were dividing Libya into "zones of influence" by "exploiting" the regional differences in the country and were creating "puppet regimes" in order to serve the purposes of "aggression." What they meant, of course, was that the prospect of Libyan orientation toward the West and the utilization of Libyan bases for the defense of the free world conjured up a spectacle highly displeasing to Moscow. Libya's friendly relations with the United Kingdom and the United States from the moment of independence did nothing to dispel that vision; and, as a permanent member of the Security Council, Soviet Russia steadfastly refused to agree to the addition

ANNEXE R/T 164

1980

ROSSI (C)

L'Africa Italiana Verso l'Indipendenza (1941-1949)

MILAN

1980

(Extraits)

p 234

tato (172), la delegazione italiana a Parigi (173) inviò in data 22 giugno ai quattro ministri degli Esteri una nota così redatta:

> « D'après des informations de presse le Gouvernement italien a appris que, dans sa séance du 20 juin, le Conseil des Ministres des Affaires Etrangères aurait décidé de soumettre à l'éxamen d'un Comité d'experts une proposition en vue de reculer d'un an toute solution du problème des territories italiens d'Afrique.
>
> Le Gouvernement italien doit faire observer à cet égard que:
>
> 1) Ce renvoi ne saurait, en aucune façon, être interprété, directement ou indirectement, comme une renonciation de la part de l'Italie, à ses droits sur ses territoires d'Afrique.
>
> Toute clause qui, dans un projet de Traité de paix formulerait un « surrender of rights » inconditionné de la part de l'Italie sur ces territoires, serait inacceptable pour le Gouvernement ainsi que pour le peuple italien.
>
> 2) Le Gouvernement italien fait remarquer que les territoires italiens d'Afrique se trouvent dans la condition juridique de zones de souverainété italienne internationalement reconnue, militairement occupées par cause de la guerre. Au cas où la décision sur la destinée de ces territoires serait reculée, il serait partant nécessaire de faire participer à l'administration provisoire des dits territoires, et pour la période en question, un nombre adéquat de fonctionnaires italiens, munis des pouvoirs qui suivant le droit de guerre, sont laissés à l'administration d'un territoire occupé sous le contrôle de la puissance occupante.
>
> 3) Le Gouvernement italien enfin doit exprimer son regret du fait qu'il n'a pas encore été entendu sur la question de ces territoires. Aussi demande-t-il formellement au Conseil des Ministres des Affaires Etrangères d'être admis à faire connaître son point de vue à ce sujet » (174). //

La proposta di rinvio suscitò forti riserve anche da parte del Governo etiopico, che protestò presso il Dipartimento di Stato e i

---

(172) La notizia venne comunicata ufficialmente a Carandini il 21 giugno (« Il Popolo », 22 giugno 1946).

(173) Questa comprendeva un nucleo di funzionari ed esperti trasferitisi già in maggio nella capitale francese in vista della Conferenza della pace.

(174) Il testo del *memorandum* venne anche comunicato da Tarchiani ad Acheson, in data 25 giugno (The Italian Embassy to the Acting Secretary of State), in FRUS, 1946, II, pp. 628-629.

ANNEXE R/T 165

19 février 1981

Lettre en date du 18/02/1981

du Chargé d'Affaires par intérim

de la Mission Permanente de la SIERRA LEONE aux Nations Unies

adressée au Président du Conseil de Sécurité

(S/14378)

DOCUMENT S/14375

Lettre, en date du 18 février 1981, adressée au Président du Conseil de sécurité par le représentant de la Sierra Leone

[Original : anglais]
[19 février 1981]

D'ordre de mon gouvernement, j'ai l'honneur d'appeler votre attention sur la situation au Tchad. A cet égard, veuillez trouver ci-joint les documents suivants :

1. L'Accord de Lagos sur la réconciliation nationale au Tchad du 18 août 1979.

2. La résolution sur le Tchad adoptée par la Conférence des chefs d'Etat et de gouvernement de l'Organisation de l'unité africaine à sa dix-septième session ordinaire, tenue à Freetown (Sierra Leone) du 1ᵉʳ au 4 juillet 1980.

3. Le communiqué final du Bureau du dix-septième sommet de l'OUA et du Comité permanent de l'OUA sur le Tchad, publié à Lomé le 14 janvier 1981.

Je vous serais obligé de bien vouloir faire distribuer d'urgence les documents précités comme documents du Conseil de sécurité.

Le chargé d'affaires par intérim
de la mission permanente de la Sierra Leone
auprès de l'Organisation des Nations Unies,

(Signé) Abdul G. KOROMA

ANNEXE I

Accord de Lagos sur la réconciliation nationale au Tchad du 18 août 1979

Nous soussignés, dirigeants des différentes parties tchadiennes, réunis à Lagos (Nigéria) du 13 au 18 août 1979, en consultation avec les représentants officiels des pays ci-après : Cameroun, Libye, Niger, Nigéria, Sénégal, Soudan, Congo, Libéria, Bénin et Empire centrafricain, et le représentant du Secrétaire général de l'Organisation de l'unité africaine (ci-après dénommés pays participants et observateurs),

Considérant les événements tragiques qui ont affecté l'unité nationale et la souveraineté du Tchad au cours des 15 dernières années,

Désireux de préserver l'unité nationale et l'intégrité territoriale du Tchad, sommes solennellement convenus de ce qui suit :

Cessez-le-feu

1. *a)* Proclamer et maintenir un cessez-le-feu immédiat sur l'ensemble du territoire national et nous engager à le respecter strictement. Les pays voisins s'engagent sur leur honneur à ne pas s'ingérer dans les affaires intérieures du Tchad et à respecter son intégrité territoriale.

b) Veiller à ce que la radiodiffusion nationale soit effectivement utilisée pour informer l'ensemble du peuple tchadien du cessez-le-feu.

c) i) Procéder à la démilitarisation de N'Djamena; à cet effet, toutes les forces armées se retireront à une distance minimale de 100 kilomètres de N'Djamena. Procéder à la récupération des dépôts d'armes clandestins. Tous les dépôts d'armes et poudrières doivent être sous le contrôle des forces neutres.

ii) Des troupes neutres assureront la protection de toutes les personnalités tchadiennes importantes ainsi que celle de la population civile de N'Djamena et des villes suivantes : Abéché, Faya, Moundou, Sarh.

iii) Les services spécialisés des forces armées tels que l'armée de l'air et le personnel d'entretien de l'armée de l'air seront soumis au contrôle des forces neutres jusqu'à la formation du Gouvernement d'union nationale de transition. La responsabilité d'assurer l'utilisation et le contrôle des autres services publics incombe souverainement au seul Gouvernement d'union nationale de transition.

d) Mettre sur pied une force neutre efficace composée de troupes en provenance d'un ou de plusieurs pays n'ayant pas de frontière commune avec le Tchad. Veiller à la libre circulation de la population civile à travers tout le territoire tchadien. La mission de la force neutre prendra fin dès la mise sur pied d'une force armée intégrée.

2. *a)* **Mettre sur pied une Commission de contrôle indépendante dirigée par le Secrétaire général de l'OUA ou son représentant et placée sous l'autorité morale du Président du Gouvernement d'union nationale de transition et composée de deux (2) représentants de chacun des pays participants et observateurs ci-après : Bénin, Cameroun, Congo, Empire centrafricain, Libéria, Libye, Niger, Nigéria, Sénégal et Soudan, ainsi que d'un (1) représentant de chacune des parties tchadiennes signataires du présent Accord. La Commission aura son siège à N'Djamena.**

b) **Coopérer pleinement avec les membres de la Commission de contrôle pour faciliter leur libre circulation à travers le territoire tchadien dans l'accomplissement de leur mission.**

c) **Le mandat de la Commission est le suivant :**

- *i)* **Veiller à l'application des conditions du cessez-le-feu, telles qu'elles sont exposées dans le présent Accord;**
- *ii)* **Veiller au maintien effectif du cessez-le-feu;**
- *iii)* **Veiller à ce que toutes les dispositions du présent Accord relatives au programme politique soient appliquées;**
- *iv)* **Veiller à la neutralité de la radiodiffusion nationale au cours de la période allant de l'entrée en vigueur du cessez-le-feu à la formation du Gouvernement d'union nationale de transition.**

3. **Veiller à ce qu'aucune des parties signataires du présent Accord ne fasse usage d'un émetteur radio privé et à ce que la radiodiffusion nationale soit effectivement utilisée pour promouvoir la paix, l'unité et la réconciliation nationale.**

Amnistie générale

4. *a)* **Libérer tous les prisonniers de guerre et détenus politiques 15 jours au plus tard après la formation du Gouvernement d'union nationale de transition.**

b) **Le Gouvernement d'union nationale de transition prendra sans délai une ordonnance pour amnistier tous les exilés politiques afin de leur permettre de retourner dans leur patrie.**

Formation du Gouvernement d'union nationale de transition

5. *a)* **Former un Gouvernement d'union nationale de transition composé de toutes les tendances signataires du présent Accord. La durée du Gouvernement sera de 18 mois.**

b) **Le Gouvernement d'union nationale de transition est l'autorité unique de l'Etat. Il est chargé de l'administration du Tchad pendant la durée de son existence.**

c) **Le Gouvernement d'union nationale de transition est chargé de l'application d'un programme politique convenu permettant la mise en place d'un gouvernement issu d'élections libres.**

d) **Procéder à un remaniement général des postes de responsabilité.**

Forces armées intégrées

6. **Dissolution de toutes les forces armées en présence et mise sur pied d'une armée nationale intégrée.**

Présence des troupes françaises

7. **Toutes les parties tchadiennes ont reconnu unanimement que le maintien des troupes françaises constituait un obstacle sur la voie de la réconciliation nationale et empêchait d'aboutir à une solution pacifique du problème tchadien. Les parties tchadiennes sont donc convenues que, une fois formé, le Gouvernement d'union nationale de transition devra procéder à l'évacuation des troupes françaises.**

Entrée en vigueur de l'Accord

8. **Le présent Accord entre en vigueur dès sa signature.**

9. **Un exemplaire du présent Accord sera déposé auprès du Secrétaire général de l'Organisation de l'unité africaine.**

Signataires

	Responsables
Frolinat **Première armée Volcan**	**Abdoulaye Adam Dana**
Union nationale démocratique	**Facho Balam**
Frolinat **Première armée populaire**	**Mahamat Abba Saïd**
Première armée populaire, Conseil démocratique révolutionnaire	**Acyl Ahmed**
Frolinat **Originel**	**Abba Siddik**
Frolinat **Forces armées occidentales (FAO)**	**Moussa Medela**
Frolinat **Fondamental**	**Hadjero Senoussi**
Mouvement populaire de libération du Tchad (MPLT)	**Aboubakar Abdel Rahane**
Forces armées populaires (FAP)	**Goukouni Weddei**
Forces armées du nord (FAN)	**Hissène Habré**
Forces armées du Tchad	**Kamougué Wadal Abdel Kader**

Pays participants

Libye	**Ali A. Treiki**
Niger	**Moumouni A. Djermakoye**
Nigéria	**Général de division** **H. E. O. Adefope**
Cameroun	**Sadou Daoudou**
Soudan	**Izzeldin Hamid**
Empire centrafricain	**Jean-Paul Mokodopo**

ANNEXE II

Résolution sur le Tchad adoptée par la Conférence des chefs d'Etat et de gouvernement de l'Organisation de l'unité africaine à sa dix-septième session ordinaire, tenue à Freetown (Sierra Leone) du 1er au 4 juillet 1980

La Conférence des chefs d'Etat et de gouvernement de l'Organisation de l'unité africaine, réunie à Freetown (Sierra Leone) du 1er au 4 juillet 1980 pour sa dix-septième session ordinaire,

Considérant les dispositions principales de l'Accord relatif à la formation d'un Gouvernement d'union nationale de transition, à l'instauration d'un cessez-le-feu sur tout le territoire tchadien, à la démilitarisation de la ville de N'Djamena, à l'installation d'une force neutre de l'OUA au Tchad et à l'organisation d'élections libres dans une période de 18 mois,

Rappelant la résolution CM/Res. 769 (XXXIV), aux termes de laquelle le Conseil des ministres avait approuvé l'envoi au Tchad d'une force de maintien de la paix de l'OUA composée de contingents du Bénin, du Congo et de la Guinée,

Ayant examiné le rapport du Secrétaire général de l'OUA sur la situation au Tchad,

Profondément préoccupée par la poursuite au Tchad, et en particulier à N'Djamena, d'hostilités qui ont fait des milliers de morts et de blessés, ont provoqué le départ massif de réfugiés vers les pays voisins et ont forcé des personnes à quitter leurs foyers à l'intérieur même du Tchad,

Considérant que les efforts que déploie actuellement le Gouvernement d'union nationale de transition, tant pour appliquer l'Accord de Lagos que pour mettre un terme aux hostilités à N'Djamena, sont sapés par les actes répétés d'ingérence de pays africains et de puissances étrangères,

Préoccupée par le fait que jusqu'à présent l'OUA n'a pas pu obtenir l'aide matérielle et financière nécessaire pour établir au Tchad une force de maintien de la paix nécessaire pour assurer le respect du cessez-le-feu qui pourrait être négocié,

Craignant en outre que les tueries et destructions de biens en République du Tchad ne continuent si des mesures rapides et efficaces ne sont pas prises,

1. *Prend acte* du rapport du Secrétaire général de l'OUA,

2. *Réaffirme* la validité de l'Accord de Lagos, qui doit servir de base au règlement de la crise tchadienne,

3. *Réaffirme* son appui au Gouvernement d'union nationale de transition dirigé par son président et lance un appel à tous les Etats membres de l'OUA pour qu'ils continuent d'appuyer le Gouvernement d'union nationale de transition dans ses efforts pour résoudre la crise tchadienne,

Pays observateurs

Congo
Max Pierre

Bénin
Léopold Ahoueya

Sénégal
Moustapha Niasse

Libéria
C. Cecil Dennis Jr.

Organisation de l'unité africaine
Peter U. Onu

Témoin

Président
Général de division Shehu M. Yar'Adua, chef d'état-major,
Conseil suprême militaire du Nigéria

4. *Lance un appel* aux Tchadiens pour qu'ils déploient tous les efforts nécessaires en vue de l'application du cessez-le-feu conformément à l'Accord de Lagos,

5. *Décide* d'essayer encore une fois de trouver une solution africaine à cette crise, en particulier en ce qui concerne l'envoi de forces neutres de l'OUA, en demandant aux Etats africains en mesure de le faire de fournir des forces de maintien de la paix à leurs propres frais à des conditions qui seront déterminées au cours de ce sommet, étant entendu que les coûts logistiques et opérationnels seront financés par des contributions volontaires,

6. *Décide en outre* que, au cas où l'OUA ne parviendrait pas par elle-même à recueillir d'ici un mois les fonds nécessaires pour les forces de maintien de la paix, le Conseil de sécurité de l'Organisation des Nations Unies sera invité, par le truchement du Groupe africain, à apporter son concours, et notamment les moyens financiers nécessaires, pour permettre le rétablissement de la paix au Tchad,

7. *Remercie* les pays et éminentes personnalités qui ont jusqu'ici apporté une excellente contribution à la recherche d'une solution au problème tchadien.

ANNEXE III

Communiqué final du Bureau du dix-septième sommet de l'OUA et du Comité permanent de l'OUA sur le Tchad, publié à Lomé le 14 janvier 1981

Les chefs d'Etat membres du Bureau du dix-septième sommet de l'OUA et du Comité permanent de l'OUA sur le Tchad, réunis à Lomé le 14 janvier 1981 en présence du chef d'Etat de la Côte d'Ivoire et sous la présidence du Président en exercice de l'OUA,

Ayant passé en revue les événements qui se sont déroulés au Tchad depuis la dernière réunion de l'OUA sur le Tchad, tenue à Lagos les 23 et 24 décembre 1980, et notamment l'accord signé entre la Jamahiriya arabe libyenne et le Gouvernement d'union nationale de transition du Tchad tendant à la fusion des deux pays,

Considérant que toute fusion entre Etats exige la libre expression des peuples concernés à travers leurs institutions démocratiquement élues,

Préoccupés par l'accroissement de la tension et de l'insécurité dans la région qui en résulte,

Préoccupés en outre par le grave danger d'intervention militaire dans la région, en particulier par des puissances extra-africaines,

1. *Réaffirment* la validité de l'Accord de Lagos comme base pour l'instauration d'une paix réelle et durable et de la sécurité dans un Tchad souverain, indépendant et stable,

2. *Déclarent* que l'accord de fusion signé entre la Jamahiriya arabe libyenne et le Gouvernement d'union nationale de transition du Tchad viole l'esprit et la lettre de l'Accord de Lagos et que, par conséquent, ils le dénoncent,

3. *Demandent en conséquence* à la Jamahiriya arabe libyenne et au Gouvernement d'union nationale de transition du Tchad de considérer ledit accord comme nul et non avenu,

4. *Affirment* que seul un gouvernement librement et démocratiquement élu par le peuple tchadien, et non le Gouvernement d'union nationale de transition, a la compétence et la légitimité voulues pour engager la nation et le peuple tchadiens dans un accord aussi fondamental et d'une portée aussi étendue,

5. *Demandent* à la Jamahiriya arabe libyenne et aux autres puissances qui auraient des troupes et du personnel militaire actuellement stationnés sur le territoire national tchadien de les retirer immédiatement,

6. *Demandent* à tous les pays membres de l'OUA, surtout ceux qui sont limitrophes de la République du Tchad, de refuser aux puissances extra-africaines et aux dissidents tchadiens l'usage de leurs territoires comme sanctuaires ou bases pour lancer des attaques armées contre la République du Tchad,

7. *Décident* d'envoyer sans plus tarder, avec l'aide de l'Organisation des Nations Unies, la Commission de contrôle créée en application de l'Accord de Lagos ainsi qu'une force africaine de maintien de la paix composée de troupes venant du Bénin, du Congo, de la Guinée et du Togo, qui devront veiller à l'application des diverses décisions de l'OUA sur le Tchad,

8. *Avertissent* que toutes élections qui ne seraient pas organisées sous les auspices de l'OUA seraient non valides;

9. *Donnent mandat* au Secrétaire général de l'OUA pour l'organisation d'élections libres et équitables sous les auspices et le contrôle de l'OUA d'ici à la fin du mois d'avril 1981.

ANNEXE R/T 166

20 février 1981

Lettre du Chargé d'Affaires par intérim

de la Mission Permanente du TCHAD aux Nations Unies

adressée au Secrétaire Général

(S/14380)

DOCUMENT S/14380

Lettre, en date du 20 février 1981, adressée au Président du Conseil de sécurité par le représentant du Tchad

[Original : français]
[20 février 1981]

Me référant à la lettre en date du 18 février 1981 du chargé d'affaires par intérim de la mission permanente de la Sierra Leone [*S/14378*] et d'ordre de mon gouvernement, j'ai l'honneur d'attirer votre attention sur ce qui suit :

a) Depuis la défaite de la faction rebelle, le calme et la paix sont revenus au Tchad. La situation à l'intérieur ne constitue pas une menace à la paix et à la sécurité internationales. C'est au contraire les menées subversives entretenues par certaines puissances qui menacent la stabilité et la paix retrouvées au Tchad.

b) Les documents annexés à la lettre susmentionnée sont des documents intérieurs de l'Organisation de l'unité africaine dont l'un d'entre eux, en l'occurrence le communiqué final du 14 janvier 1981, n'a pas encore été entériné par le sommet des chefs d'Etat de l'OUA. Ils ne devaient en aucune manière faire l'objet d'une quelconque communication aux Etats Membres de l'Organisation des Nations Unies.

c) Le communiqué final de Lomé du 14 janvier 1981 n'engage en rien mon gouvernement du fait qu'il a été adopté en l'absence du Tchad.

d) La position dominante a depuis toujours été d'éviter d'internationaliser le problème tchadien. C'est dans ce cadre que le document qui vient d'être adopté à l'unanimité à Alger, à l'issue des travaux de la Conférence ministérielle des Etats riverains du Sahara et destiné à la réflexion des chefs d'Etat desdits Etats, dispose expressément que

> "tous les participants ont réaffirmé avec force que le problème du Tchad est un problème purent africain et, comme tel, son examen ne peut avoir lieu en dehors d'une enceinte africaine".

e) En conséquence, mon gouvernement s'oppose énergiquement à tout examen de la situation au Tchad par le Conseil de sécurité.

Je vous serais reconnaissant de faire distribuer le texte de la présente lettre comme document du Conseil de sécurité.

Le chargé d'affaires par intérim
de la mission permanente du Tchad
auprès de l'Organisation des Nations Unies,

(Signé) Ngaré KESSELY

ANNEXE R/T 168

25-28 mai 1988

Rapport du Comité Ad Hoc de l'O.U.A.

sur le différend frontalier TCHAD-LIBYE

(AHG/150 (XXIV))

1018

[illegible]

ORGANIZATION OF
AFRICAN UNITY
Secretariat
P. O. Box 3243

منظمة الوحدة الافريقية
السكرتارية
ص. ب ٣٢٤٣

ORGANISATION DE L'UNIT
AFRICAINE
Secretariat
B. P. 3243

Addis Ababa اديس ابابا

AHG/150 (XXIV)

CONFERENCE DES CHEFS D'ETAT
ET DE GOUVERNEMENT
VINGT-QUATRIEME SESSION ORDINAIRE
ADDIS-ABEBA, ETHIOPIE
25-28 MAI 1988.

RAPPORT DU COMITE AD HOC DE L'OUA SUR LE DIFFEREND FRONTALIER TCHAD-LIBYE

RAPPORT DU COMITE AD HOC DE L'OUA
SUR LE DIFFEREND FRONTALIER TCHAD-LIBYE

1. Au cours de sa vingt-troisième session ordinaire qui s'est tenue à Addis-Abéba, du 27 au 29 Juillet 1987, Votre Auguste Assemblée a adopté la résolution ABG/Res.167 (XXIII) aux termes de laquelle elle a, entre autres, demandé aux Chefs des Etats Membres du Comité ad hoc de l'OUA sur le différend frontalier Tchad/Libye, de poursuivre l'action entreprise par les Ministres en vue d'amener les deux Parties, le Tchad et la Libye, à trouver une solution négociée au différend qui les oppose.

2. En application de cette disposition, S.E. El Hadj OMAR BONGO, Président de la République Gabonaise, Président du Comité, en accord avec S.E. le Docteur Kenneth KAUNDA, alors Président en exercice de l'OUA, a convoqué une réunion au Sommet dudit Comité qui a eu lieu à Lusaka le 23 Septembre 1987.

3. La tenue de cette réunion a été rendue possible, il faut le souligner, par la bonne volonté manifestée par les deux Parties au différend, le Tchad et la Libye, qui ont accepté l'appel au cessez-le-feu lancé par leurs Excellences le Dr. Kenneth KAUNDA, Président en exercice de l'OUA, et El Hadj OMAR BONGO, Président du Comité ad hoc.

4. Au cours de cette session, la première au Sommet depuis sa création en Août 1977, le Comité a demandé aux Parties au différend, dûment représentées aux travaux :

i) de mettre à sa disposition toute documentation pertinente à l'appui de leurs thèses, le 30 Octobre 1987 au plus tard ;

ii) de maintenir et de consolider le cessez-le-feu à tous les niveaux ;

iii) de s'abstenir de tout acte de nature à internationaliser le conflit.

5. En même temps, le Comité a établi un calendrier de travail précis pour le sous-comité des Experts Juristes et Cartographes, pour les Ministres et pour les Chefs d'Etat.

6. Si, pour des raisons tout à fait indépendantes de la volonté des Etats Membres du Comité, ce calendrier n'a pas été scrupuleusement respecté, néanmoins les réunions prévues ont effectivement eu lieu.

7. Ainsi, le sous-comité des Experts Juristes et Cartographes s'est réuni en deux phases à Libreville :

- du 13 au 27 Janvier 1988 pour procéder à l'élaboration de son deuxième rapport sur la base de la documentation pertinente, fournie au Comité par les deux Parties dans les délais prescrits ;
- du 7 au 12 Avril 1988, pour préparer, à la demande du Comité ministériel, une synthèse dynamique et approfondie au plan juridique, de l'ensemble des deux rapports qu'il avait élaborés pour en faciliter la compréhension.

8. Les Ministres se sont rencontrés à Libreville du 1er au 2 Février 1988 et du 13 au 14 Avril 1988. Ils ont, tour à tour, examiné le deuxième rapport du sous-Comité puis la synthèse dont il vient d'être fait état.

9. Il convient de signaler, pour s'en réjouir, la présence régulière et la collaboration fructueuse des deux Etats parties au différend à chacune de ces réunions tant au Sommet qu'au niveau des Ministres et des Experts.

10. Les conclusions formulées par les Experts Juristes et Cartographes dans leurs deux rapports, et enrichies par les Ministres se ramènent aux deux scénarios de règlement du différend frontalier tchado-libyen ci-après :

- à titre principal : un règlement politique dans le cadre de l'OUA, avec la participation active des deux Chefs d'Etat tchadien et libyen ;
- à titre subsidiaire : un règlement juridictionnel par recours à une juridiction internationale.

11. Au cours de sa deuxième réunion au Sommet, tenue le 25 Mai 1988 à Addis-Abéba, sous la présidence de S.E. El Hadj OMAR BONGO, son Président, le Comité a marqué sa préférence pour le premier terme de l'alternative, c'est-à-dire, le règlement politique dans le cadre de l'OUA.

12. Dans cette optique et à la lumière des consultations menées par son Président, S.E. El Hadj OMAR BONGO, le Comité a procédé à une esquisse des grands axes autour desquels pourrait s'articuler une approche politique du règlement du différend frontalier Tchad/Libye. Il s'agit notamment de :

i) la création d'un climat de confiance et d'une dynamique de dialogue par le rapprochement des deux Parties au différend ;

ii) la normalisation des rapports entre les deux Etats notamment aux plans diplomatique et de la coopération dans tous les domaines d'intérêt commun ,

iii) la reconduction et la consolidation du cessez-le-feu par les moyens et mesures appropriés.

13. En conclusion, le Comité a décidé de recommander à la présente session de la Conférence des Chefs d'Etat et de Gouvernement de l'OUA :

1) de la maintenir saisi du dossier du différend frontalier qui oppose le Tchad et la Libye ;

2) d'accepter l'approche politique telle qu'esquissée ci-dessus ,

3) de confirmer ledit Comité dans sa mission à la lumière de ces recommandations.

ANNEXE R/T 169

1er juillet 1989

Fiche adressée à M. le Président de la République

et relative au retour des personnes déplacées du B.E.T.

REPUBLIQUE DU TCHAD
****
PRESIDENCE DE LA REPUBLIQUE
******
MISSION DE REHABILITATION DU B.E.T.
****

UNITE - TRAVAIL - PROGRES
****

N° 0196 /PR/MR-BET/89

FICHE

A L'ATTENTION DE SON EXCELLENCE, MONSIEUR LE PRESIDENT DE LA REPUBLIQUE RELATIVE AU RETOUR DES PERSONNES DEPLACEES DU B. E. T.

Sur instructions du Chef de l'Etat, Président de la République, transmises par la Direction Générale du Protocole d'Etat, il nous a été demandé de présenter à son intention le recensement des populations du BET résidant à N'Djaména et venant de Libye désirant se rendre dans leur région.

Voici ci-dessous le tableau des effectifs :

BORKOU :	De N'Djaména :	709
	De Libye :	178
TOTAL BORKOU :		887
ENNEDI :	N'Djaména :	51
GOURO :	De Libye :	32
OUNIANGA :	De N'Djaména et Libye	60
FADA :	De N'Djaména et Libye !	74
TOTAL ENNEDI :		217

.../...

TIBESTI :

Zouar - Ogui

De N'Djaména : 35
De Libye : 40

Bardaï :

De N'Djaména : 11
De Libye : 8

TOTAL TIBESTI : 9 4

TOTAL GENERAL : 887 + 217 + 94 = 1 198

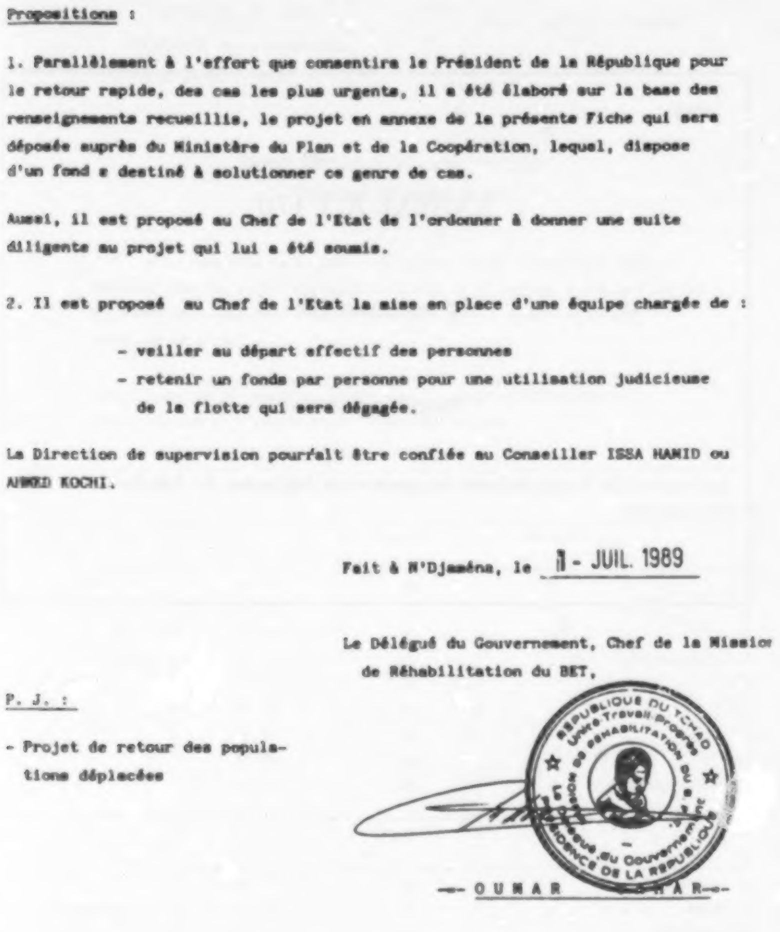
Observations :

1. L'effectif assez élevé de ceux du Borkou et la dominance surtout féminine de cette population désirant se rendre au Borkou s'explique davantage par l'imminence du calendrier de la récolte des dattes que par un désir effectif d'installation.

2. Si on excepte les ressortissants en provenance de la Libye, l'esprit mercantile consistant à transporter le maximum de sacs de mil et autres marchandises est présente chez tous ceux qui sont candidats au retour.

3. Nonobstant ce qui précède et qui ne favorise pas le déblocage des moyens énormes pour transporter les personnes dans le BET surtout si elles reviendront par la première occasion, il faut néanmoins mettre tous les moyens pour leur retour. En effet, le vide que connaît le BET même dans son Chef-Lieu, annihile tout désir d'intervention de la part de certains organismes et explique l'absence d'activités génératrices de biens donc de revenus favorisant ainsi l'exode des rarer personnes désirant se fixer.

.../...



Propositions :

1. Parallèlement à l'effort que consentira le Président de la République pour le retour rapide, des cas les plus urgents, il a été élaboré sur la base des renseignements recueillis, le projet en annexe de la présente Fiche qui sera déposée auprès du Ministère du Plan et de la Coopération, lequel, dispose d'un fond s destiné à solutionner ce genre de cas.

Aussi, il est proposé au Chef de l'Etat de l'ordonner à donner une suite diligente au projet qui lui a été soumis.

2. Il est proposé au Chef de l'Etat la mise en place d'une équipe chargée de :

- veiller au départ effectif des personnes
- retenir un fonds par personne pour une utilisation judicieuse de la flotte qui sera dégagée.

La Direction de supervision pourrait être confiée au Conseiller ISSA HAMID ou AHMED KOCHI.

Fait à N'Djaména, le 1 - JUIL. 1989

Le Délégué du Gouvernement, Chef de la Mission
de Réhabilitation du BET,

--- OUMAR [illegible] ---

P. J. :

- Projet de retour des populations déplacées

ANNEXE R/T 170

15 septembre 1989

Rapport provisoire

de Rapatriement des personnes déplacées du B.E.T.

REPUBLIQUE DU TCHAD
******
PRESIDENCE DE LA REPUBLIQUE
****
MISSION DE REHABILITATION DU B.E.T.
****

UNITE - TRAVAIL - PROGRES
****

1028

Rapport Provisoire de Rapatriement des Personnes Déplacées du BET.

Commencée le 10 Août 1989 comme prévue, l'opération s'est déroulée dans des conditions satisfaisantes et le dernier véhicule a quitté N'Djaména le 2 Septembre 1989 en direction du BET, malgré le retard causé par la pluie.

L'opération s'est étalée sur une période d'au moins un mois durant laquelle 16 véhicules (6 OPS dont 1 Garage et 10 FAO/OSRO) furent chargés et convoyés selon le tableau suivant :

ORGANISMES	VEHICULES	NOMBRE DE PASSAGERS		DESTINATIONS PAR SOUS-PREFECT
		ADULTES	ENFANTS	
	N° 8	52	2	
	N° 44	51	1	
	N° 107	50	1	
F A O/OSRO	N° 7	52		BORKOU/FAYA
	N° 45	52		
	N° 48	50		
	N° 14	49		
	N° 37	50	2	
O P S	N° 52	43	3	YEBBI - BOU
	9	449	9	
	N° 27	53	8	ENNEDI/FADA
F A O/OSRO	N° 50	53	3	GOURO
O P S	N° 41	50		OUNIANGA KEBI
	3	156	11	

	N° 50	50	9	TIBESTI/ZOUAR
	N° 39	50	6	ZOUAR
O P S	N° 51	50	4	BARDAÏ
	3	150	19	

Il ressort de ce tableau que les organismes FAO/OSRO et OPS ont transporté respectivement au BET : 512 adultes + 17 enfants et 243 adultes + 22 enfants sur un total de 1.200 personnes prévues et ensemble 755 adultes et 39 enfants.

Par ailleurs, ces populations se répartissent de la façon suivante par Sous-Préfecture :

- Borkou : 449 adultes + 9 enfants
- Ennedi : 156 adultes + 11 enfants
- Tibesti :150 adultes + 19 enfants

755 adultes + 39 enfants

Cette opération n'a été possible que grâce au concours combien important de l'USAID qui a permis l'utilisation de 19.077.810 F CFA sur les fonds de contrepartie des ventes du riz et de l'apport en logistique du Bureau de l'ONU pour les Services de Projets (OPS) et de FAO/OSRO ; la Mission de Réhabilitation du BET, consciente de cette action très déterminante des uns et des autres leur adresse ses très vifs remerciements.

Cependant, beaucoup de candidats au retour ont pu être acheminés, il reste néanmoins nécessaire d'envisager trois ou quatre voyages Nous voudrions qu'à cet effet la date soit prolongée pour finir cette opération de retour.

Les détails et destinations vous parviendront ultérieurement.

Fait à N'Djaména, le 15 SEPT. 1989

P. LE DELEGUE DU GOUVERNEMENT

Le Chef de Bureau Développement

-•- TAHAR

ANNEXE R/T 171

1989

Fonds de Contrepartie des ventes de riz

Plan de conception de sous-activité

Rapatriement de population du B.E.T. Deuxième phase

RICE SALES COUNTERPART FUND

SUBACTIVITY DESIGN PLAN

REPATRIATION OF B.E.T. POPULATION - II

I. Subactivity Purpose: To provide transportation from N'Djamena to the B.E.T. for 1,200 persons, many of whom have recently returned to Chad from Libya via Benin and Nigeria. The implementation of this subactivity will thus contribute to the Government of Chad's efforts to rehabilitate the B.E.T.

II. Indication of End of Subactivity: The activity will be considered completed when all the returnee candidates registered by the Mission for the Rehabilitation of the B.E.T. have arrived at their destinations in the B.E.T., or when the 19,077,810 CFA have been expended, whichever comes first. No disbursements will be made on commitments for expenditures incurred after September 10, 1989.

III. Implementing Entity: The U.N. Office of Project Services (OPS) and FAO/OSRO will be responsible for the logistical arrangements of this operation, including the provision of trucks, drivers, fuel, spare parts, insurance (if required), and a mobile maintenance unit. Fuel costs and per diem for drivers and drivers' helpers will be reimbursed from the counterpart fund in accordance with the financial plan appearing in Section VI. The Mission for the Rehabilitation of the B.E.T. will be responsible for the administrative arrangements (registration of passengers, coordination with B.E.T. Prefectoral and traditional authorities) and supervising the embarkment of passengers with their belongings.

IV. Subactivity Implementation Plan and Schedule:

Jul. 31: Registration of potential returnees will have been completed.
Aug. 10-Sept. 10: Embarkation of passengers and departure for B.E.T.
Sept. 10: Date by which all trucks will have left N'Djamena; costs associated with trucks leaving after this date will not reimbursed under this activity.
Sept. 30: Passengers will have arrived at their destinations.

Registration lists of potential returnees have been compiled by the Mission for the Rehabilitation of the B.E.T. and are attached as Annex I to this agreement. It is anticipated, however, that some of the registered passengers have already found the means to return, while additional returnee candidates may present themselves when the operation begins. Notwithstanding these modifications, it is understood that the funding limit for this activity is set at CFA 19,077,810. No expenses beyond this funding limit will be reimbursable under this activity.

Loading of passengers will begin by August 10, 1989. It is estimated that approximately 50 persons, with their belongings, will be loaded aboard each truck. Each family unit will be allowed 200 kg of baggage. Given the target figure of 1,200 persons to transport, 24 trucks would normally be required for this operation. However, insofar as some of the destinations will not have a full complement of 50 persons, it will be necessary to utilize 27 trucks (see transport plan in budget). The truck fleets of OPS and FAO/OSRO will be called upon to provide the appropriate vehicles for this operation. Insofar as there is an insufficient number of appropriate vehicles to satisfy the transport requirements in one operation, it will be necessary to transport the returnees in two waves: the first wave will involve the use of fifteen trucks; as soon as additional trucks become available, a second wave of twelve trucks will follow. A mobile maintenance unit will also be provided by OPS to repair its vehicles if breakdowns occur.

Upon completion of the operation, OPS and FAO/OSRO will request reimbursement of fuel and per diem costs by supplying the justifying documentation (receipts for fuel, transport waybill indicating kilometers logged, departure date and return date, for each vehicle and pay voucher for per diems) to USAID and the Ministry of Planning and Cooperation.

. Procurement Plan: The subactivity will fund only the cost
f diesel fuel and per diems for drivers and drivers' helpers.
PS and FAO/OSRO will be responsible for procurement of their
iesel fuel.

VI. Budget:

a) Fuel Consumption (First Wave):

Destination	Fleet	distance (round trip)	liters/km	N° Trucks	Total liters	CFA
Faya	FAO	3,100 km*	0.70	8	17,360	4,687,200
Yebbi Bou	OPS	3,600	0.85	1	3,060	826,200
Fada	FAO	2,488	0.70	1	1,741	470,070
Gouro	FAO	4,040*	0.70	1	2,828	763,560
Ounianga K.	OPS	2,600	0.85	1	2,210	596,700
Bardaï	OPS	3,600	0.85	2	6,120	1,652,400
Zouar	OPS	3,200	0.85	1	2,720	734,400
Mobile Unit	OPS	4,000	0.85	1	3,400	918,000

- Fuel Consumption (Second Wave):

Faya	FAO	3,100*	0.70	5	10,850	2,929,500
Faya	OPS	2,100	0.85	5	8,925	2,409,750
Gouro	FAO	4,040*	0.70	1	2,828	763,560
Fada	FAO	2,488	0.70	1	1,741	470,070

Total Fuel 63,783

65,112 liters diesel x CFA 270/liter = CFA 17,221,410

b) Per Diems:

Destination	N° Trucks	N° Drivers	N° Helpers	N° Days	Per Diem	CFA
Faya	13	13		24*	1,400	436,800
			26	24*	700	436,800
	5	5		16	1,400	112,000
			10	16	700	112,000
Yebbi Bou	1	1		28	1,400	39,200
			2	28	700	39,200
Fada	2	2		20	1,400	56,000
			4	20	700	56,000
Gouro	2	2		32*	1,400	89,600
			4	32*	700	89,600
Ounianga Kebir	1	1		22	1,400	30,800
			2	22	700	30,800
Bardaï	2	2		30	1,400	84,000
			4	30	700	84,000
Zouar	1	1		27	1,400	37,800
			2	27	700	37,800
Mobile Unit	1	1		40	1,400	56,000
			1	40	700	28,000

Total Per Diem costs 1,856,400

c) Total Fuel and Per Diem costs .... CFA 19,077,810

* Distances and per diems calculated for FAO trucks to Faya and Gouro are based on dropping the trailer off at Salal, depositing the passengers at destination, and then returning for the trailer.

VII. Recurrent Costs: This is not a development activity. This is an emergency activity, resulting from the economic disruption and social dislocation of the B.E.T. population during prolonged hostilities and foreign occupation. The question of recurrent costs is therefore not relevant as the activity will not be repeated.

Ministry of Planning and
Cooperation

Bernard D. Wilder

Bernard D. Wilder
AID Representative

United Nations Office of
Project Services

FAO/OSRO

Mission for the Rehabilitation
of the B.E.T.

TRADUCTION OFFICIEUSE

FONDS DE CONTREPARTIE DES VENTES DE RIZ
PLAN DE CONCEPTION DE SOUS-ACTIVITE

RAPATRIEMENT DE POPULATION DU B.E.T - DEUXIEME PHASE

I. Objet de la Sous-Activité: Assurer le transport de N'Djaména à destination du B.E.T. de 1200 personnes, dont beaucoup sont revenues récemment au Tchad en provenance de la Libye via le Bénin et le Nigéri La réalisation de cette sous-activité contribuera ainsi aux efforts du Gouvernement de la République du Tchad pour la réhabilitation du B.E.T

II. Indication de Fin de Sous-Activité: Cette activité sera considér comme terminée lorsque tous les candidats pour le rapatriement enregistrées par la Mission de Réhabilitation du B.E.T. seront arrivés leurs points de destination dans le B.E.T, ou lorsque les 19.077.810 C auront été dépensés, dès que l'une ou l'autre de ces deux limites aura été atteinte. Il n'y aura pas de déboursements sur les engagements de dépenses encourues après le 10 septembre 1989.

III. Agences d'Exécution: Le Bureau de l'ONU pour les Services de Projets (OPS) et FAO/OSRO seront chargés des arrangements logistiques cette opération, dont l'octroi de camions, chauffeurs, carburant, pièc de rechange, assurance (si nécessaire), et une équipe mobile d'entretien. Les frais de carburant et les per diems pour les chauffe et les aides-chauffeurs seront remboursés sur le fonds de contrepartie conformément au plan budgétaire (voir ci-après). La Mission pour la Réhabilitation du B.E.T sera responsable des arrangements administrati (enregistrement des passagers, coordination avec les autorités préfectorales et traditionnelles) et de la supervision de l'embarqueme des passagers avec leurs effets.

IV. Plan et Calendrier d'Exécution de la Sous-Activité:

31 juillet:	L'enregistrement des rapatriés éventuels devra êtr terminé avant cette date.
10 août - 10 sept:	Embarquement des passagers et départ à destination B.E.T.
10 sept:	Date à laquelle tous les camions auront quitté N'Djaména; les frais encourus par les camions quittant après cette date ne seront pas remboursés dans le cadre de cette activité.
30 sept:	Les passagers seront arrivés à leurs lieux de destination.

Les listes d'enregistrement des rapatriés éventuels ont été dressées par la Mission de Réhabilitation du B.E.T. et constituent l'Annexe I de cet Accord. On prévoit cependant, que des certains candidats ont déjà trouvé les moyens de retourner chez eux, tandis que d'autres pourraient se présenter lorsque l'opération d'embarquement aura commencé. Toutefois, il est convenu que le plafond de financement de cette activité est fixé à 19.077.810 CFA. Aucune dépense se situant au delà de ce plafond sera remboursable dans le cadre de cette activité.

L'embarquement des passagers commencera le 10 août 1989. On estime qu'approximativement 50 personnes, avec leurs effets, seront embarquées à bord de chaque camion. Chaque famille aura droit à 200 kg de bagages. En tenant compte du chiffre-cible de 1.200 personnes à transporter, il faudrait normalement, 24 camions pour la réalisation de cette opération. Cependant, dans la mesure où il n'y aura pas en tout 50 personnes pour certains points de destination, il sera nécessaire d'utiliser 27 camions (voir plan de transport dans le budget). On aura recours aux parcs automobiles de l'OPS et de FAO/OSRO pour pourvoir aux besoins en véhicules pour la réalisation de cette opération. Etant donné que le nombre de véhicules adaptés au terrain est insuffisant pour effectuer l'opération d'un coup, il faudra la scinder en deux rotations: la première rotation fera appel à 15 camions; dès que d'autres camions seront disponibles, une deuxième rotation de 12 camions suivra. Une équipe d'entretien mobile sera également fournie par l'OPS pour la réparation de ses véhicules en cas de pannes.

Une fois l'opération terminée, l'OPS et FAO/OSRO demanderont le remboursement des frais de carburant et de per diems en soumettant les documents de justification (factures de carburant, bordereaux de livraison indiquant pour chaque véhicule le nombre de kilomètres parcourus, la date de départ ainsi que la date de retour, et reçus de paiement des per diems) à l'USAID et au Ministère du Plan et de la Coopération.

V. Plan d'Acquisition: Cette sous-activité financera uniquement les frais de gas-oil et les per diems pour les chauffeurs et les aides-chauffeurs. L'OPS et FAO/OSRO seront responsables de l'acquisition de leur gas-oil.

VI. Budget:

a) Consommation de carburant (première rotation):

Destination	Flotte	Distance (aller-retour)	Litres/km	N° de camions	N° Total litres	CFA
Faya	FAO	3 100 km*	0,70	8	17 360	4 687 200
Yebbi Bou	OPS	3 600	0,85	1	3 060	826 200
Fada	FAO	2 488	0,70	1	1 741	470 070
Gouro	FAO	4 040*	0,70	1	2 828	763 560
Ounianga K.	OPS	2 600	0,85	1	2 210	596 700
Bardaï	OPS	3 600	0,85	2	6 120	1 652 400
Zouar	OPS	3 200	0,85	1	2 720	734 400
Equipe Mobile	OPS	4 000	0,85	1	3 400	918 000

Consommation du carburant (deuxième rotation):

Destination	Flotte	Distance (aller-retour)	Litres/km	N° de camions	N° Total litres	CFA
Faya	FAO	3 100*	0,70	5	10 850	2 929 500
Faya	OPS	2 100	0,85	5	8 925	2 409 750
Gouro	FAO	4 040*	0,70	1	2 828	763 560
Fada	FAO	2 488	0,70	1	1 741	470 070

Carburant 63 783

65 112 litres de gas-oil x 270 CFA/litre = CFA 17 221 410

b) Per Diems:

Destination	Nbre de Camions	Nbre de Chauffeurs	Nbre d'aides chauffeurs	Nbre de Jours	Per Diem	CFA
Faya	13	13		24*	1,400	438 800
			26	24*	700	438 800
	5	5		16	1,400	112 000
			10	16	700	112 000
Yebbi Bou	1	1		28	1,400	39 200
			2	28	700	39 200
Fada	2	2		20	1,400	56,000
			4	20	700	56,000
Gouro	2	2		32*	1,400	89,600
			4	32*	700	89,600
Ounianga Kebir	1	1		22	1,400	30 800
			2	22	700	30 800
Bardaï	2	2		30	1,400	84 000
			4	30	700	84 000
Zouar	1	1		27	1,400	37 800
			2	27	700	37 800
Equipe Mobile	1	1		40	1,400	56 000
			1	40	700	28 000

Total des Frais de Per Diem 1 856 400

c) Total des Frais de Gas-Oil et Per Diem CFA 19 077 810

* La distance que parcouriront les camions FAO en destination de Faya et Gouro ainsi que les per diems sont calculés en fonction de deux trajets à partir de Salal où la remorque sera récupérée.

VII. Coûts Récurrents: Cette activité n'est pas une activité de développement, c'est une activité de secours d'urgence, résultant de la perturbation économique et de la dislocation sociale de la population du B.E.T pendant la longue période d'hostilités et d'occupation étrangère. La question des coûts récurrents ne se pose pas par conséquent, dans la mesure où cette activité ne se reproduira pas.

Bernard D. Wilder

Ministère du Plan et de la
Coopération

Bernard D. Wilder
Représentant de l'USAID

Bureau des Services de
Projet de l'ONU

FAO/OSRO

Mission de Réhabilitation
du B.E.T.

ANNEXE R/T 173

26 août 1991

Annexe au Mémoire libyen "Exhibt 73"

TRANSLATION

Excerpts of Franco-Libyan Negotiations of July 1955

20 July 1955

Ambassador Dejean:

He proposed an exchange of memoranda with maps attached to them indicating the demarcation of the frontiers, he indicated that the question is a very simple one. I also propose that later on a mixed committee be sent up to fix the frontiers and draw them precisely. However, for the present time it is sufficient to say that the frontier passes a number of points which have been agreed upon.

The Prime Minister:

The question of the frontiers has no connection with the Treaty and it must not be linked with it, especially since the drawing of the frontiers requires experts and specialists who are not currently available in Libya. However, the matter will be studied and we shall return to it in the near future.

26 July 1955

The frontiers: The two parties agreed to an interpretative letter relating to the frontiers, and similarly they agreed to the formation of a Franco-Libyan committee to demarcate the frontier.

28 July 1955

The Frontiers

The Prime Minister:

(He said) that the question was not free from difficulty since the Italians had occupied many centres behind the exisiting frontier.

Ambassador Dejean:

(He explained) that it had actually been done but in an illegal manner and that Italy had exploited France's weakness during the last war to ensconce itself in its lands and that it had crossed over the borders which had been agreed upon under the Agreement of 1919 which were still valid at the present time. As far as the Agreement of 1935 was concerned, it had not been ratified by the French parliament and was thus illegal and had no value internationally.

The Prime Minister:

(He proposed) that the question of the frontiers be deferred at the present time until the Libyan side had had time to study the subject, and then experts could be despatched to work with French experts to reach an agreement on demarcation and he asked that it be considered sufficient to say that the Agreement of 1919 was acceptable and that the implementation of it be left to the near future.

Ambassador Dejean:

(He insisted) that it was not possible to conclude the Treaty without an agreement on the frontiers and he proposed that an agreement be reached on three points through which the frontier passed between Ghat and Toummo, and that the line be left until later.

The Prime Minister:

(He proposed) that they should be satisfied with two points only south of Ghat, namely Anaï and Derwat Al Jamal. He stated that he was unable to accept another point north of Ghat until the line drawing had been agreed upon. After lengthy discussions the French delegation accepted the two points proposed by the Libyan side which were Anaï and Derwat Jamal.

3.31 In support, the CM cites a document described as a "tableau comparatif"[26]. The document is neither signed nor dated; it is a unilateral French summary of the result of the negotiations, as reflected in the Treaty as signed. The CM suggests it was probably prepared in August 1955[27]. Although this rather unimpressive piece of travaux is hardly binding on Libya, it brings out that, in the view of France, the alleged agreement of Libya and France in January 1955 to "s'en tenir aux stipulations générales des textes internationaux en vigueur à la date de création de l'Etat libyen" had not been disavowed in August but rather that -

> "Le règlement de cette question est précisé par l'article 3 du Traité et par son annexe I[28]."

It refers to the "énumération limitative des actes internationaux limitant les frontières" set out in Annex I.

3.32 Although Libya rejects the document's interpretations and characterizations of Article 3 and Annex I for reasons already stated above, this document, together with the summary of the chief French negotiator Ambassador Dejean of the situation as it stood on 28 July[29], shows that the Annex I list had not yet made its appearance in the negotiations, for M. Dejean summarized the situation in this way:

> "L'article 3 maintient que les frontières sont celles qui résultent des actes internationaux en vigueur lors de la constitution du Royaume de Libye."

There is no mention at all of any list of agreements set out in Annex I. So clearly, as of 26 July, Libya had not even seen this list; and the contention that at the 26 July meeting Libya had "explicitly accepted" the boundary resulting from these agreements must be rejected. This is confirmed by the Libyan travaux relating to the 26 July meeting. Annex I made its appearance then, but it only concerned the frontier between Ghat and Toummo and the demarcation commission to demarcate that boundary. There is no mention of the list, which had yet to be added to Annex I.

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[26] CM, Annex 269.

[27] CM, p. 136, para. 119.

[28] CM, p. 137, para. 120.

[29] CM, Annex 268.

3.33 It is remarkable that these two documents - the 28 July report of Ambassador Dejean to the Quai d'Orsay, concerning the progress of negotiations (CM, Annex 268), and the unsigned, undated "tableau comparatif" (Annex 269) - are the entirety of the French travaux furnished with the CM covering the July-August negotiations. Instead of furnishing all of the documentary evidence that is no doubt available, the CM focusses on several episodes, partly to confirm its contentions as to the intent of Libya in the final phase of the negotiations, partly as an indication of Libya's alleged acquiescence in the French view as to the boundary. The first, in order of time, is what the CM refers to as the "Aozou incident"; the other concerns a map allegedly produced by Libya during the negotiations in July 1955 said to have placed part of Tibesti within Libyan territory.

(b) The "Aouzou Incident"

3.34 This episode took place on 28 February 1955, in between the two sets of 1955 Treaty negotiations; it has already been touched on above[30]. The LM concluded that the significance of this event (more accurately called there the "Moya incident" for it was at Moya that the episode took place) was two-fold[31]: (i) it revealed the French Government's internal doubts as to the existence of a conventional boundary along Libya's southern frontier; and (ii) it was an early attempt by Libya to install the machinery of government in the Libya-Chad borderlands, an initiative that France repelled with military force[32]. It is interesting to note that M. Bernard Lanne, one of Chad's most articulate

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[30] See, para. 1.19, et seq., above.

[31] LM, paras. 5.512-5.517. The locations of Aouzou and Moya are shown here on Map LC-M 9.

[32] Ibid.

ANNEXE R/T 177

Cartes

DOCUMENTS CARTOGRAPHIQUES COMPLÉMENTAIRES

Les pages suivantes, présentent les réductions de neuf cartes d'origine britannique. Les huit dernières de ces cartes proviennent des archives de la "ROYAL GEOGRAPHICAL SOCIETY" et complètent les quatre exemplaires des cartes, provenant de la même source et présentées par la Libye (C.M.L. pages 116,117).

Les noms, les origines, les dates et les légendes de ces cartes sont mis en évidence, sur le feuillet en regard de chacune d'elles.

En vraie grandeur, des reproductions de ces cartes seront déposées au greffe de la Cour, avec les cartes de l'Atlas Cartographique Tchadien.

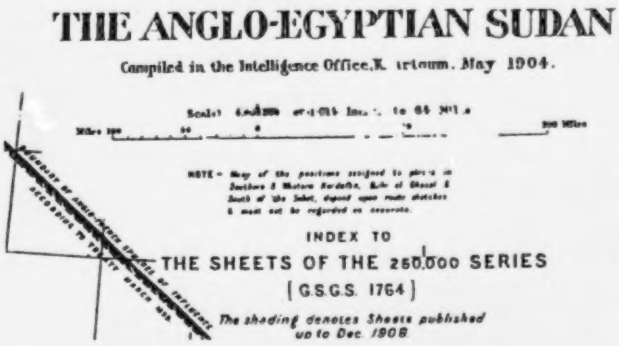
Liste des cartes présentées

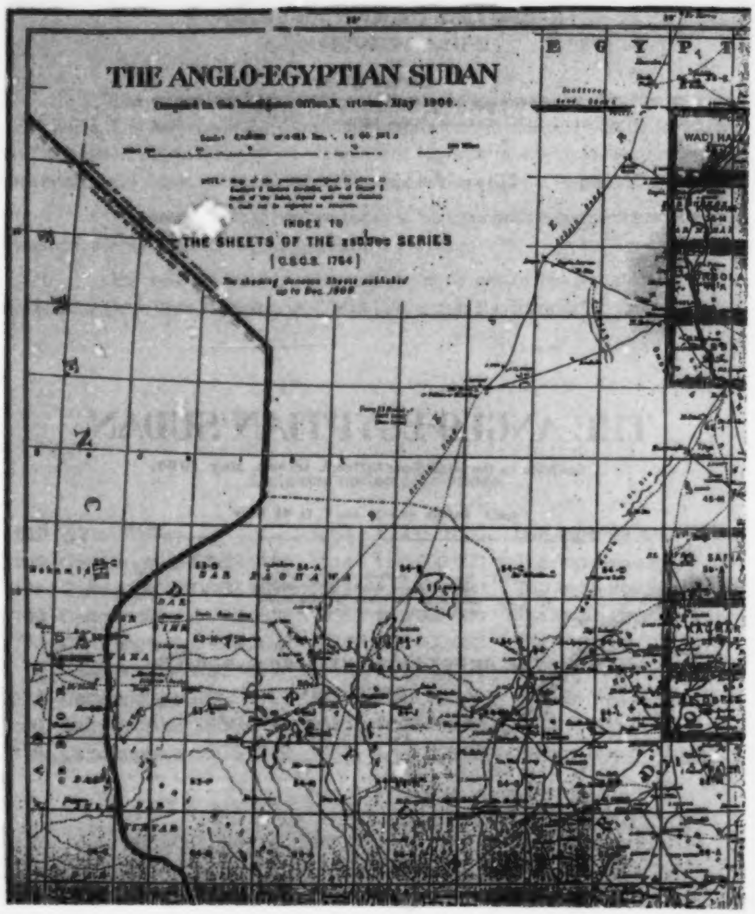
1102	Carte anglaise	1904	1 : 4 000 000	The Anglo-Egyptian Sudan
1104	Carte anglaise GSGS 2692	1914	1 : 3 000 000	The Anglo-Egyptian Sudan
1106	Carte anglaise GSGS 2692	1921	1 : 3 000 000	The Anglo-Egyptian Sudan
1108	Carte anglaise GSGS 2692	1928	1 : 3 000 000	The Anglo-Egyptian Sudan
1110	Carte anglaise GSGS 2692	1934	1 : 3 000 000	The Anglo-Egyptian Sudan
1112	Carte anglaise GSGS 2720	1914	1 : 16 000 000	Political Map of Africa
1114	Carte anglaise GSGS 2720	1921	1 : 16 000 000	Political Map of Africa
1116	Carte anglaise GSGS 2720	1930	1 : 16 000 000	Political Map of Africa
1118	Carte anglaise GSGS 2720	1935	1 : 16 000 000	Political Map of Africa

THE ANGLO-EGYPTIAN SUDAN

1 : 4 000 000

Carte anglaise
réalisée par The Intelligence Office de Kartoum
en **1904**.

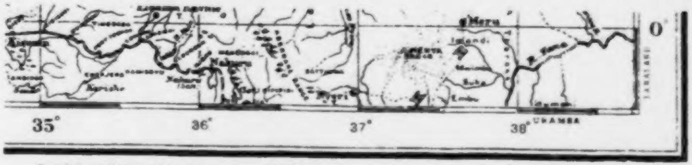

THE ANGLO-EGYPTIAN SUDAN
Compiled in the Intelligence Office, Khartoum. May 1904.
NOTE – Many of the positions assigned to places in Southern & Western Kordofan, Bahr el Ghazal & South of the Sobat, depend upon route sketches & must not be regarded as accurate.
INDEX TO
THE SHEETS OF THE 1/250,000 SERIES
[G.S.G.S. 1764]
The shading denotes Sheets published up to Dec. 1908.


THE ANGLO-EGYPTIAN SUDAN
INDEX TO
THE SHEETS OF THE 250,000 SERIES
[G.S.G.S. 1764]
E G Y P T
WADI HA

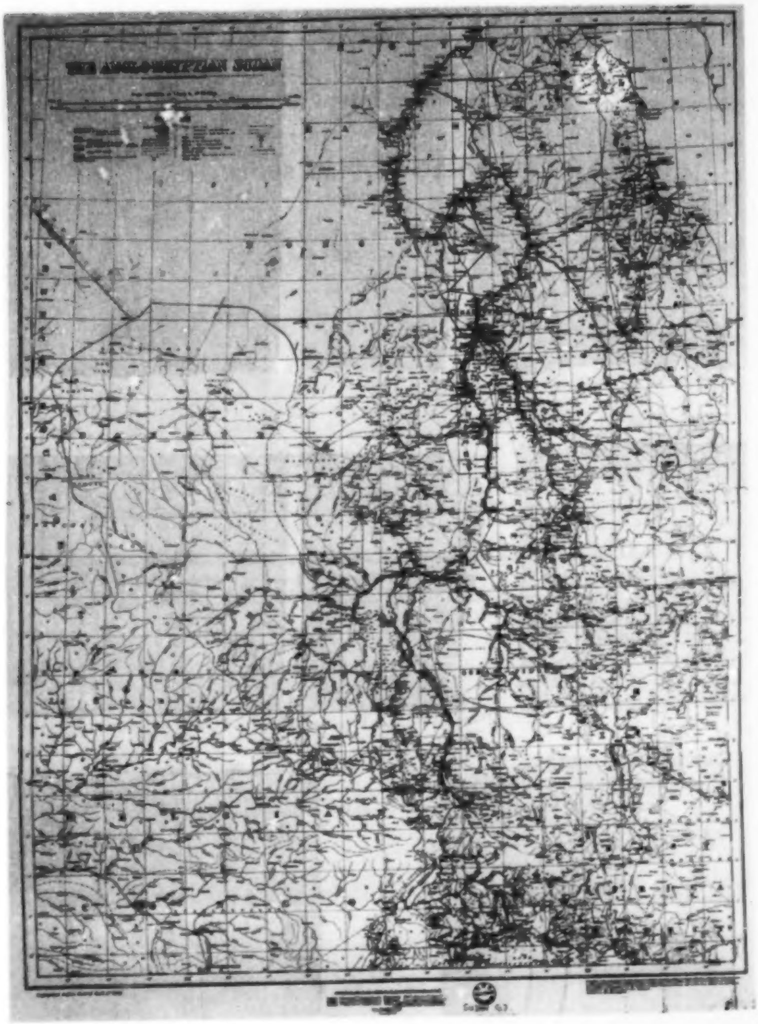
THE ANGLO-EGYPTIAN SUDAN

1 : 3 000 000

Carte anglaise, série GSGS 2692,
imprimée en juillet **1914** par War Office.



Compiled in the Geographical Section, General Staff, from the latest editions of Sudan and other maps. Much of the topography in the neighbourhood of and beyond the frontier depends upon route sketches and should not be regarded as accurate.
The boundary with Abyssinia from the Sobat to L. Rudolf is provisional only and has not been ratified, also the Western boundary of the Sudan has not been delimited.
Printed at the War Office, July 1914


THE ANGLO-EGYPTIAN SUDAN

THE ANGLO-EGYPTIAN SUDAN

1 : 3 000 000

Carte anglaise, série GSGS 2692,
révisée et réimprimée en **1921** par War Office.

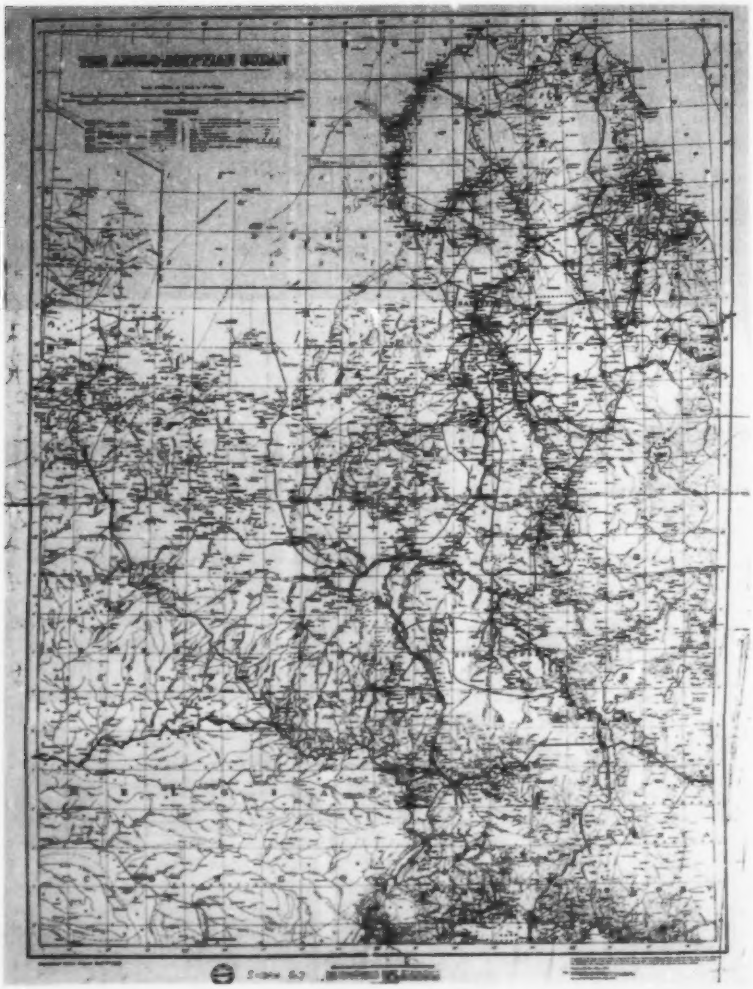
0°
Meru
35°
36°
37°
38°

Compiled in the Geographical Section, General Staff from the latest editions of Sudan and other maps. Much of the topography in the neighbourhood of and beyond the frontier depends upon route sketches and should not be regarded as accurate. The boundary with Abyssinia from the Sobat to L. Rudolf is provisional only and has not been ratified.

Printed at the War Office, 1914.

Note: *Border portions of adjacent provinces and part of French Equatorial Africa revised, April, 1921.*

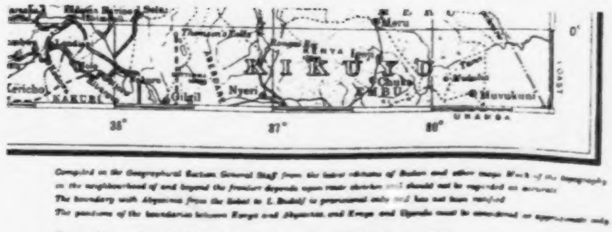
Revised and reprinted, Dec, 1921.

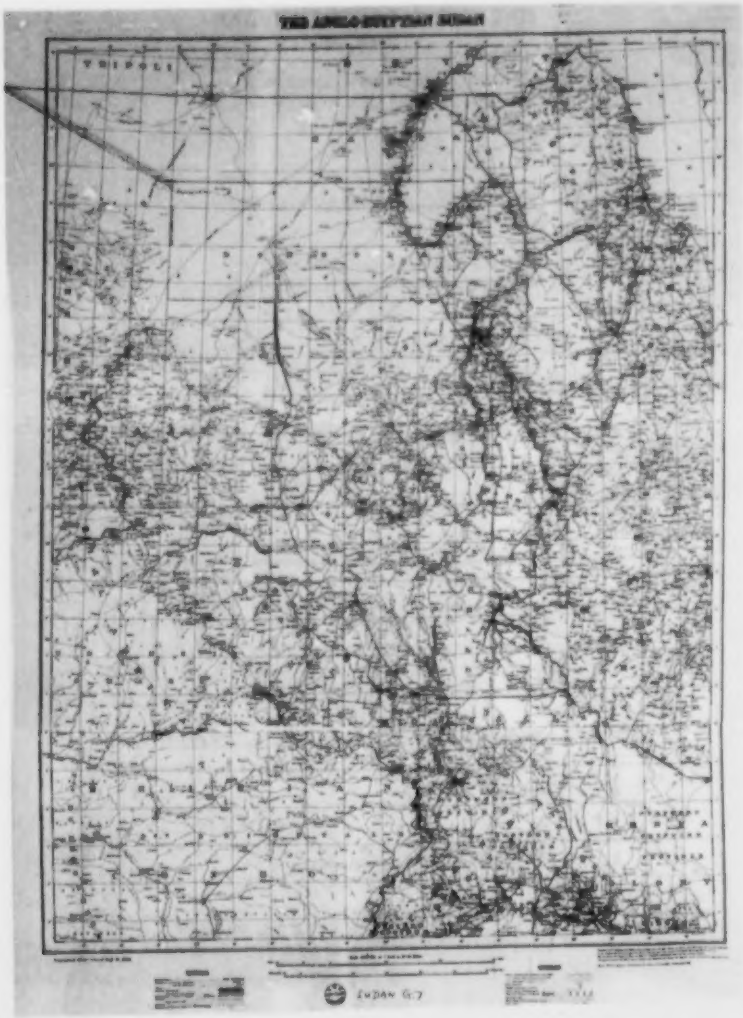

THE ANGLO-EGYPTIAN SUDAN

THE ANGLO-EGYPTIAN SUDAN

1 : 3 000 000

Carte anglaise, série GSGS 2692,
imprimée en **1928** par Ordnance Survey.

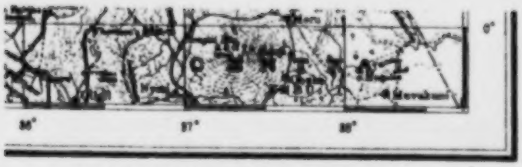

Thomson's Falls
Meru
KIKUYU
Kericho
NAKURU
Gilgil
Nyeri
Chuka
EMBU
Muvukoni
UKAMBA
COAST
0°
36°
37°
38°
Compiled in the Geographical Section General Staff from the latest editions of Sudan and other maps. Much of the topography in the neighbourhood of and beyond the frontier depends upon route sketches and should not be regarded as accurate.
The boundary with Abyssinia from the Sobat to L. Rudolf is provisional only and has not been ratified.
The positions of the boundaries between Kenya and Abyssinia and Kenya and Uganda must be considered as approximate only.
Drawn, Heliozincographed, and Printed at the Ordnance Survey Office, Southampton, 1928


THE ANGLO-EGYPTIAN SUDAN
TRIPOLI
Sudan G.7

THE ANGLO-EGYPTIAN SUDAN

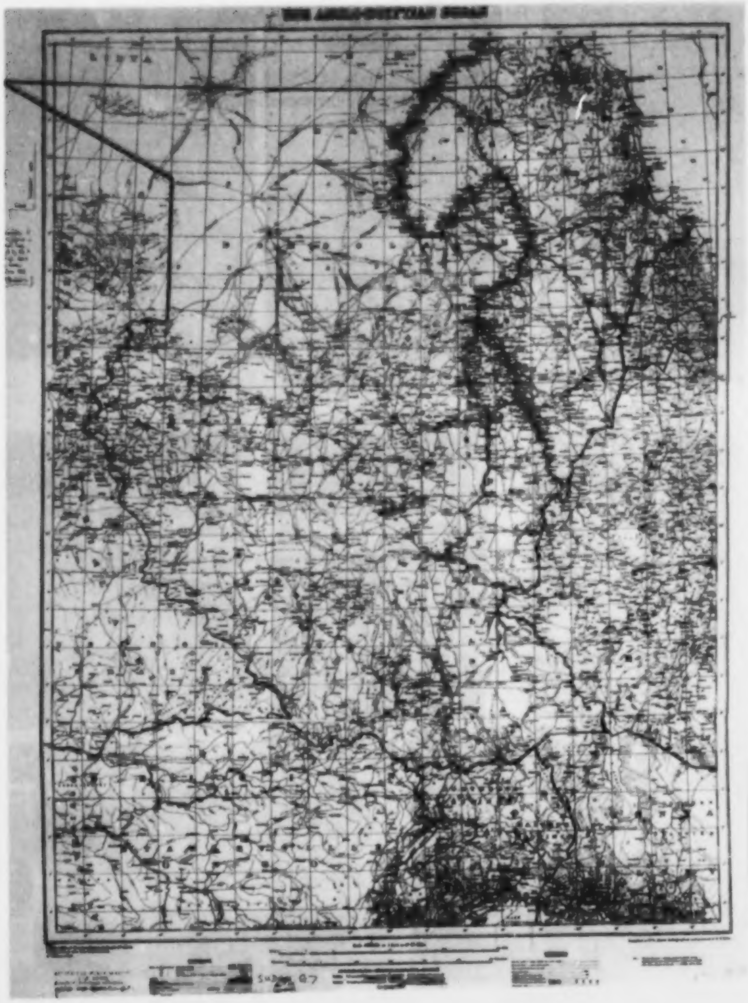
1 : 3 000 000

Carte anglaise, série GSGS 2692,
imprimée en **1934** par Ordnance Survey.



Compiled at W O, drawn heliographed and printed at O S 1934

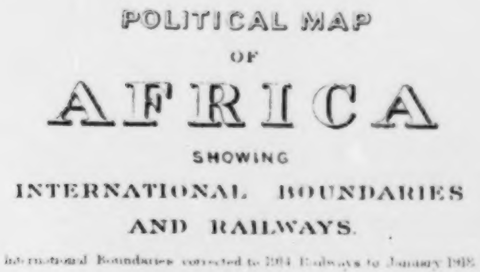
Note Revised [illegible] from material supplied by Sudan Survey
Department for areas within limits of Sudan, and elsewhere
from latest editions of G.S.G.S. 1 : 1,000,000 Africa Series


THE ANGLO-EGYPTIAN SUDAN
LIBYA
Sudan 67

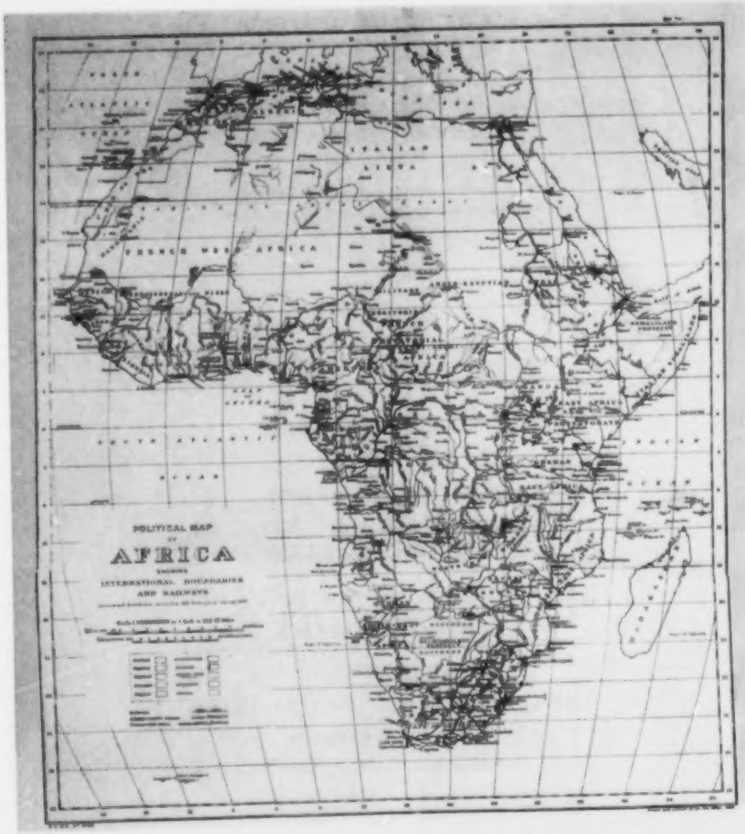
POLITICAL MAP OF AFRICA

1 : 16 000 000

Carte anglaise, série GSGS 2720,
imprimée par War Office en **1914** (surcharge chemins de fer 1918).



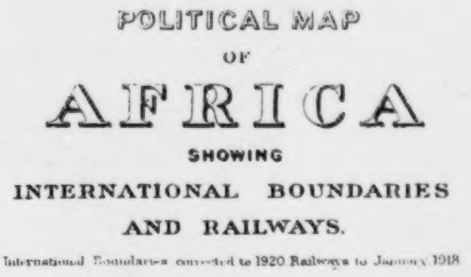
POLITICAL MAP
OF
AFRICA
SHOWING
INTERNATIONAL BOUNDARIES
AND RAILWAYS.
International Boundaries corrected to 1914 Railways to January 1918


POLITICAL MAP
OF
AFRICA
SHOWING
INTERNATIONAL BOUNDARIES
AND RAILWAYS
NORTH ATLANTIC OCEAN
SOUTH ATLANTIC OCEAN
FRENCH WEST AFRICA
ITALIAN LIBYA
INDIAN OCEAN

POLITICAL MAP OF AFRICA

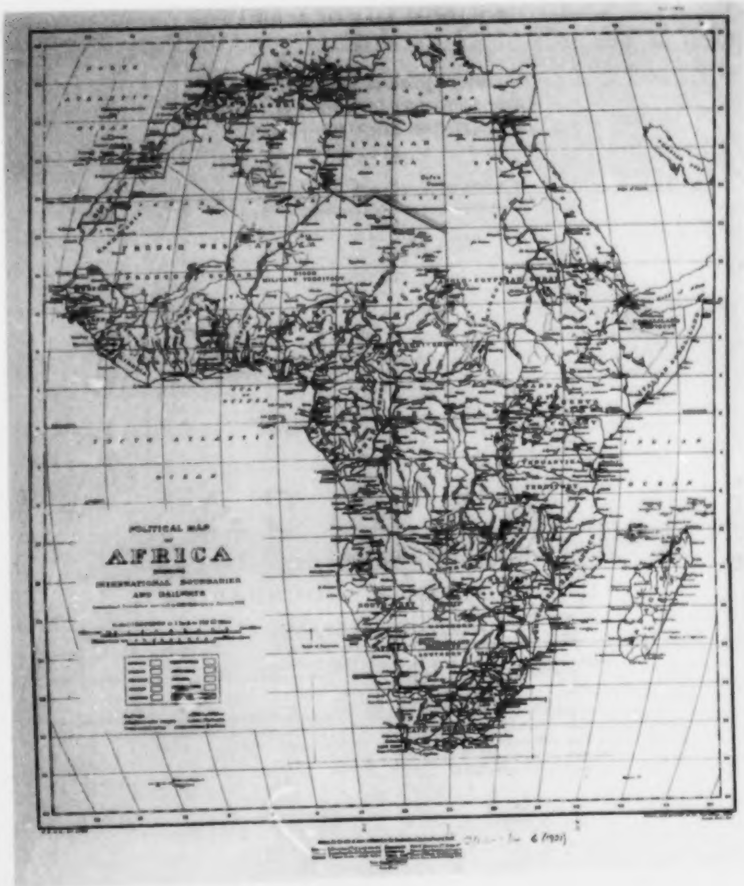
1 : 16 000 000

Carte anglaise, série GSGS 2720,
révisée et imprimée par War Office en **1921**.



POLITICAL MAP
OF
AFRICA
SHOWING
INTERNATIONAL BOUNDARIES
AND RAILWAYS.

International Boundaries corrected to 1920 Railways to January 1918


POLITICAL MAP
OF
AFRICA
SHOWING
INTERNATIONAL BOUNDARIES
AND RAILWAYS
NORTH ATLANTIC OCEAN
SOUTH ATLANTIC OCEAN
INDIAN OCEAN
ITALIAN LIBYA
FRENCH WEST AFRICA
TANGANYIKA TERRITORY

POLITICAL MAP OF AFRICA

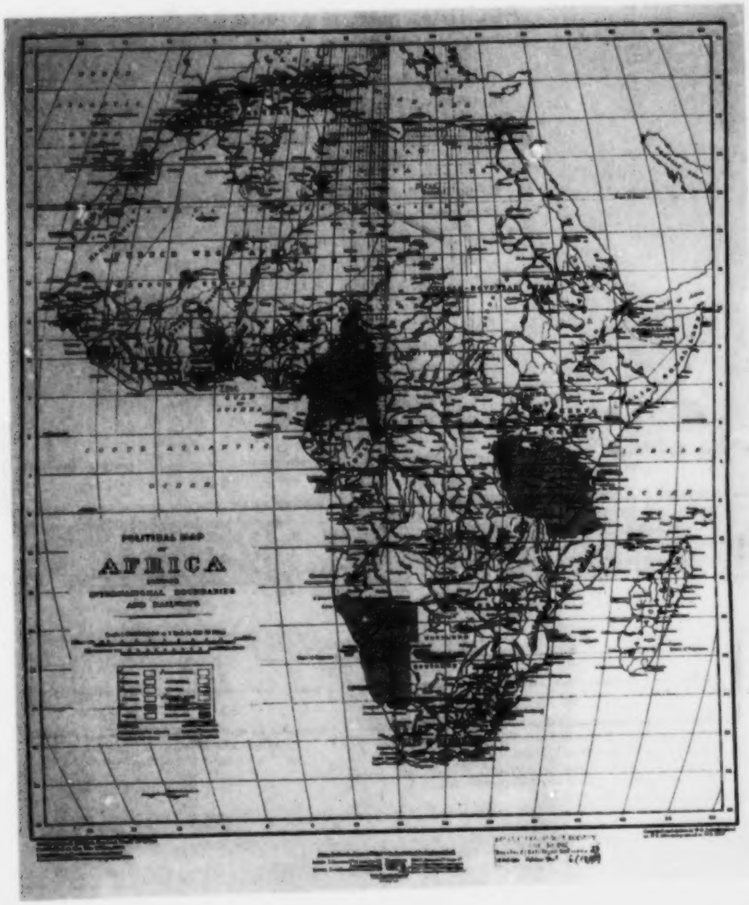
1 : 16 000 000

Carte anglaise, série GSGS 2720,
imprimée par War Office en **1930**.

40
24
18
54
60
40

Geographical Section. General Staff. Nº 2720
Published at the War Office. 1914.
Boundaries and railways revised and
minor additions to other topography 1929

Compiled and drawn at W.O. heliographed
at O.S. 1914 and printed at W.O. 1930


POLITICAL MAP
OF
AFRICA
SHOWING
INTERNATIONAL BOUNDARIES
AND RAILWAYS
SOUTH ATLANTIC
OCEAN
OCEAN

POLITICAL MAP OF AFRICA

1 : 16 000 000

Carte anglaise, série GSGS 2720,
imprimée par War Office en **1935**.

40
24
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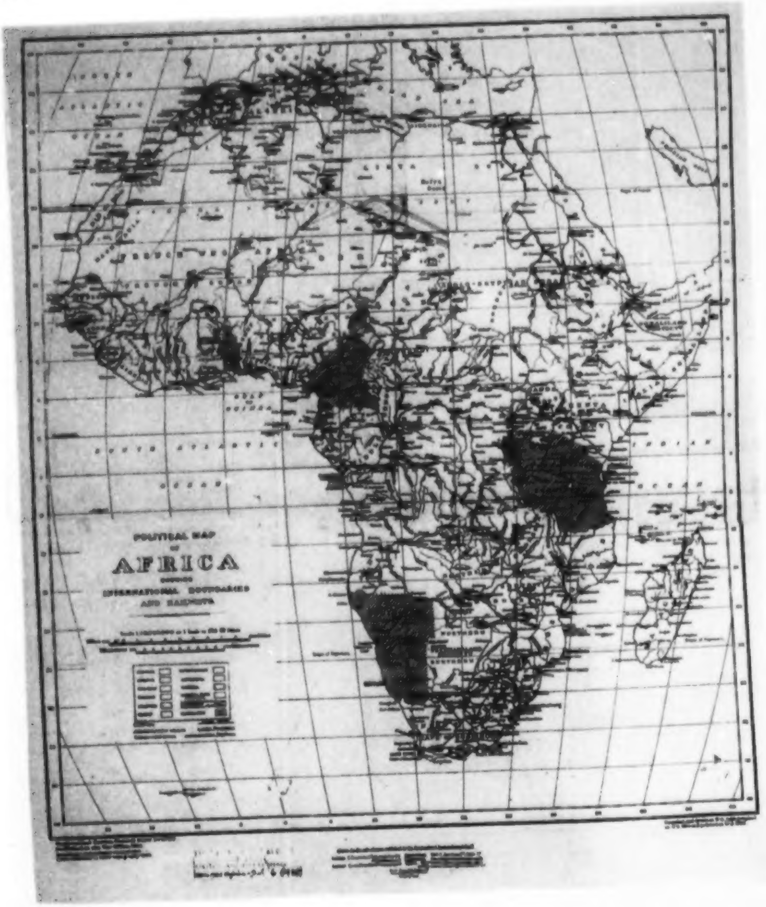
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